



respect of offences committed on the high seas within three miles of its coasts. Meaning and effect of Stat. 12 and 13 Vic., c. 69, ss. 2 and 3, considered. *Queen v. Thompson* (1 B. L. R. O. Cr. 1) commented on. Where certain of the inhabitants of the village of Mauori, in the Tháná District, sallied out in boats, and pulled up and removed a number of fishing-stakes lawfully fixed in the sea within three miles from the shore by the villagers of a neighbouring village, it was held (i) that a Magistrate, F.P., in the Tháná District, had jurisdiction over the offenders; (ii) that the Penal Code was the substantive law applicable to the case; and (iii) that the offence amounted to mischief within the meaning of ss. 425 and 427 of that Code.—*Reg. v. Kástyá Rámá*, 8 Bom. H. C. R. 63. [Kemball, J. Sep. 20, 1871.]

IN 1876, in the case of *Queen v. Keyn*, L. R., 2 Ex. D. 63, the accused, who was a foreigner in command of a foreign ship, ran, while passing within three miles of the shore of England on a voyage to a foreign port, into a British ship, and sank her, thereby causing a passenger to be drowned. The accused was thereupon charged with manslaughter; but it was held that the English Courts had no jurisdiction to try him. In consequence of this ruling, the Territorial Waters Jurisdiction Act, 1878 (41 and 42 Vic., c. 73), was passed, enacting (s. 2) that “an offence committed by a person, whether he is or is not a subject of Her Majesty, on the open sea, within the territorial waters of Her Majesty’s dominions, is an offence within the jurisdiction of the Admiral, although it may have been committed on board or by means of a foreign ship, and the person who committed such offence may be arrested, tried, and punished accordingly.

THE prisoner was found guilty, and sentenced, under Reg. IV. of 1797, to transportation for life, for a murder committed in 1861, before the Penal Code came into operation, and the case was sent up to the High Court to confirm the sentence. Reg. IV. of 1797 was repealed by Act XVII. of 1862, and that Act was wholly repealed by Acts VIII. of 1868 and X. of 1872. *Held*, on a reference to a Full Bench, that the conviction was illegal, s. 6 of Act I. of 1868, which provides that the repeal of any Act or Regulation shall not affect any offence committed before the repealing Act shall have come into operation, not being applicable.—*Empress v. Diljour Misser*, I. L. R., 8 Cal. 225. [Garth, C.J., and Kemp, Macpherson, Markby, and Ainslie, JJ. Feb. 20, 1877.]

UP to the 1st January 1862, a person committing the offence of murder was liable to trial and punishment under the Regulations. By Act XVII. of 1862, the Regulations prescribing punishments for offences were repealed, “except as to any offence committed before the 1st January 1862.” By the same Act it was declared that no person who should claim the same should be deprived of any right of appeal or reference which he would have enjoyed under such Regulations. By s. 6 of Act I. of 1868, the repeal of an Act does not affect anything done, or any offence committed, or any fine or penalty incurred before the repealing Act shall have come into operation. Under the provisions of this section the repeal of Act VII. of 1862 by Act VIII. of 1868 and Act X. of 1872 did not, in respect of offences committed before the 1st January 1862, affect the penalties prescribed by such Regulations, nor were any of the Regulations prescribing punishments for offences, which were in force before the passing of Act XVII. of 1862, repealed in respect of offences committed before the 1st January 1862, prior to the passing of Act I. of 1868. *Held* accordingly, where a person committed murder in the year 1855, that such person was punishable under the Regulations. *Held* also that, inasmuch as such right as the right of reference given by s. 3 of Reg. IV. of 1797 accrues on conviction, and therefore in the present case had not accrued before Act XVII. of 1862 was repealed, it is doubtful whether a person convicted of murder committed before the 1st January 1862 has such right—*Empress v. Mulua*, I. L. R., 1 All. 599. [Turner and Spunkie, JJ. Feb. 15, 1878.]

THE prisoner was tried at Bombay, under s. 411 of the Penal Code, on a charge of having dishonestly received and retained stolen property, knowing or having reason to believe the same to be stolen property. He was also charged, under ss. 108 (expl. 3) and 109, with having abetted that offence. It appeared at the trial that the prisoner was a clerk in the employment of a mercantile firm at Port Louis, in the island of Mauritius. On the 29th October and the 1st November 1879, certain letters addressed by the firm to their commission-agent at Bombay were abstracted from the post-office at Port Louis. The letters contained six bills of exchange belonging to the firm for an aggregate amount of Rs. 26,550. On the 1st November 1875, the prisoner sent all six bills of exchange in a letter to the manager of a bank at Bombay, requesting that the several amounts might be collected on the prisoner’s own account, and remitted to him by bills on Mauritius. The sums were accordingly realized by the bank, and duly remitted to the prisoner. It was not denied that the prisoner obtained possession of the money, and used it as his own. His defence was that the bills had been given to him in payment of a debt. The prisoner



THE  
INDIAN PENAL CODE,

BEING

ACT XLV. OF 1860,

ANNOTATED WITH

RULINGS OF THE HIGH COURTS IN INDIA

UP TO JUNE 1887.

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THIRD EDITION.

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BY

D. E. CRANENBURGH,

PLEADER.

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beforehand what was likely to happen. Where land was already sown with corn, an indigo-factory had no right to attempt forcibly to sow indigo in it, although it was indigo-contract land; and villagers had no right to oppose such forcible sowing by force, inasmuch as the police-station was close by.—Queen v. Jeelall and others, 3 Wyman's Rev., Civ., and Crim. Reporter, 21; 2 Mad. Jur. 168. [Kemp and Glover, JJ. Feb. 18, 1867.]

WHERE persons join an unlawful assembly for the purpose of committing an assault, and, instead of preventing those armed from using their weapon, encourage them to do so, they are in the same position as those members of the unlawful assembly who struck the blows.—Queen v. Dushruth Roy and others, 7 W. R. 58. [Glover, J. April 18, 1867.]

IN a case of riot, in which a man was killed, the whole of the members of the unlawful assembly, as well the victorious as the worsted, were held equally guilty of culpable homicide not amounting to murder.—Queen v. Mana Singh and others, 7 W. R. 103. [Kemp and Glover, JJ. May 7, 1867.]

WHERE a man is grievously wounded in a riot, the police are bound to act without taking into consideration who was the aggressing party. In the discharge of their duties, and in the absence of any proof that they exceeded their duty, the police were held entitled to the protection of the Court.—Queen v. Damoo Singh, 8 W. R. 36. [Kemp and Glover, JJ. July 8, 1867.]

THERE had been a riot and fight between two factions, and some members of one party (A) were charged with the murder of the leader of the other party (B), and some members of the other party (B) were charged with causing grievous hurt to the leader of party (A). Held that the members of each party should have been committed for trial separately, and that the Magistrate was wrong in committing the members of party (A) and of party (B) for trial all together upon joint charges as if they had had one common object.—Queen v. Sheikh Bazu and others, 8 W. R. 47; B. L. R. Sup. Vol. 750. [Peacock, C.J., and Loch, Bayley, Kemp, Seton-Karr, Phear, and Macpherson, JJ. July 27, 1867.]

WHERE prisoners are charged both with rioting, being armed with deadly weapons, and with causing hurt by shooting, and their conviction of the latter offence rests solely on the fact of their belonging to a party by one of whom (not one of the prisoners) fire-arms were used, it is wrong to pass a cumulative sentence, and to punish the prisoner both for the rioting and for the causing hurt. The punishment should be for either one or other of those offences. A charge should be so framed as to refer to the section of the Penal Code under which the offence charged is punishable, as required by ss. 234 and 237 of the Code of Criminal Procedure. Where there is a riot and fighting between two factions, the members of each party should be committed for trial separately, and not all together.—Queen v. Durzoolla and others, 9 W. R. 33. [Seton-Karr and Macpherson, JJ. Mar. 14, 1868.] See *contra* Queen v. Callachand, 7 W. R. 60, *infra*, p. 97:

A PARTY in possession of land is legally entitled to defend his possession against another party seeking to eject him by force. Therefore, where there was a charge against both parties of rioting under s. 147, and both were convicted and punished, the High Court quashed the conviction, holding that the party in possession was protected by s. 104, Penal Code.—Queen v. Toolsee Sing and others, 2 B. L. R. Ap. Cr. 16; 10 W. R. 64. [Loch and Glover, JJ. Dec. 21, 1868.]

IN a trial arising out of an affray or faction-fight, the members of each faction should be tried separately. The statements of the members of each faction can then, if desired, be taken on solemn affirmation, and be made evidence against their opponents; but if they decline to give evidence on the ground of implicating themselves, they cannot be compelled to do so.—Queen v. Mahomed Hossein, 1 N. W. P. 293. [Pearson and Turner, JJ. April 2, 1869.]

WHERE land in the possession of A was encroached on by the servants of B, who committed mischief on the land, and the servants of A assembled and resisted the encroachments, the High Court declined to interfere with the Magistrate's order convicting the servants of A of unlawful assembly, as there was no error in law in the order of the Magistrate, who found as a fact that the right of defence of private property had ceased under cl. 4, s. 105 of the Penal Code.—Queen v. Rajkristo Doss and others, 12 W. R. 43. [Kemp and Markby, JJ. Aug. 3, 1869.]

THE act of the defendants in assembling and forcibly interrupting a procession was forbidden by cl. 4 of s. 141, although the defendants acted upon the ground that the procession was a nuisance or annoyance to them or their community.—Pro., Nov. 11, 1869. 5 Mad. H. C. R. Ap. 4.

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WHERE a police-officer who had been called on to answer to a charge of bribery, which was not sustained by the evidence, was found guilty of violation of duty under s. 29, Act V. of 1861, of which offence the trying officer found sufficient evidence in the course of the trial, *held* that an accused person called on to answer to a specific charge cannot be convicted on an entirely different charge without previous notice of the offence imputed to him, and opportunity being afforded him of meeting the accusation under s. 23, Act V. of 1861. A police-officer is not bound to arrest a person against whom no proceedings have been directed if he believes that he has not sufficient grounds for apprehending him.—Grish Chunder Nundee, Petitioner, 26 W. R. 8. [Morris and McDonell, JJ. Sep. 7, 1876.]

K, a police-officer, employed in a Criminal Court to read the diaries of cases investigated by the police, and to bring up in order each case for trial with the accused and witnesses; after a case of theft had been decided by the Court in which the persons accused were convicted, and a sum of money, the proceeds of the theft, had been made over by the order of the Court to the prosecutor in the case, asked for and received from the prosecutor a portion of such money, not as a motive or reward for any of the objects described in s. 161 of the Penal Code, but as “*dasturi*.” *Held* that K was not, under these circumstances, punishable under s. 161 of the Penal Code, but under s. 165 of that Code.—*Empress v. Kampta Prasad*, I. L. R., 1 All. 530. [Stuart, C.J., and Spankie, J. Dec. 15, 1877.]

THE manager of a Court of Wards’ estate paid into a Bank, carrying on the treasury business of the Government, a sum of money on behalf of Government. B, a *poddar* in the Bank, demanded and took a reward for his trouble in receiving the money. On B being prosecuted and charged under s. 161 of the Penal Code, *held* that, although the money might have been paid on account of Government, it was on behalf of the Bank, and not on behalf of the Government, that the money was received by the accused, and that the *poddar* was a servant of the Bank only, and not a public servant within the meaning of cl. 9, s. 21 of the Penal Code.—*In the Matter of the Petition of Modum Mohun*, I. L. R., 4 Cal. 376. [Ainslie and Broughton, JJ. Dec. 10, 1878.]

To ask for a bribe is an attempt to obtain one, and a bribe may be asked for as effectually in implicit as in explicit terms. Where, therefore, B, who was employed as a clerk in the pension department, in an interview with A, who was an applicant for a pension, after referring to his own influence in that department, and instancing two cases in which, by that influence, increased pensions had been obtained, proceeded to intimate that anything might be effected by “*kar-rawai*,” and, on the overture being rejected, concluded by declaring that A would rue and repent the rejection of it, *held* that the offence of attempting to obtain a bribe was consummated.—*Empress v. Baldeo Shai*, I. L. R., 2 All. 253. [Pearson and Spankie, JJ. April 7, 1879.]

THE accused was charged with having received illegal gratifications from C. and Co. on three specific occasions in 1876. In 1876, 1877, and 1878, C. and Co. were doing business as commissariat contractors, and the accused was the manager of the Commissariat Office. *Held* that evidence of similar but unconnected instances of receiving illegal gratifications from C. and Co. in 1877 and 1878 was not admissible against him under ss. 5 to 13 of the Evidence Act. *Held per* Garth, C.J. (Maclean, J., concurring).—The evidence was not admissible under s. 14. *Per* Garth, C.J.—S. 14 applies to cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it; not to cases where the question of guilt or innocence depends upon actual facts, and not upon the state of a man’s mind or feeling. *Per* Mitter, J.—If the receipt of the illegal gratifications mentioned in the charge be considered proved by other evidence, and if it were necessary to ascertain whether the accused received them as a motive for showing favour in the exercise of his official functions, the alleged transactions of 1877 and 1878 would be relevant under s. 14, but they would not be relevant to establish the fact of payments in 1876.—*Empress v. M. J. Vyapoory Moodeliar*, I. L. R., 6 Cal. 655; S C. L. R. 197. [Garth, C.J., and Mitter and Maclean, JJ. Jan. 22 and Feb. 9, 1881.]

WHEN any Judge, or any public servant not removable from his office without the sanction of the Government of India or the local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government. Such Government may determine the

# P R E F A C E.

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THIS is a revised edition of the Penal Code, in which are embodied all amendments made up to date of publication.

The rulings of the High Courts in India have been taken from the Indian Law Reports, the Weekly Reporter, the Bengal Law Reports, and several other Reports.

To save reference to the Criminal Procedure Code (Act X. of 1882), outer marginal notes are inserted opposite each penal section, showing (1) by what Court each offence is triable ; (2) whether the police may arrest without warrant or not ; (3) whether a warrant or a summons shall ordinarily issue in the first instance ; (4) whether the offence is bailable or not ; and (5) whether it is compoundable or not.

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*September 15, 1887.*

conviction was good. *Semble per Wilson, J.*—The decision in *Queen v. Bedoo Noshyo* (12 W. R. 11), though a guide to the discretion of Courts in framing and dealing with charges, was not intended to, and does not, affect the law applicable to the matter.—*Habibullah v. Empress, I. L. R., 10 Cal. 937. [Wilson, Tottenham, and Norris, JJ. July 7, 1884.]*

IN a charge under s. 193 of the Penal Code, it is not necessary to allege which of two contradictory statements upon oath is false, but it is sufficient (unless some satisfactory explanation of the contradiction should be established) to warrant a conviction of the offence of giving false evidence to show that an accused person has made one statement upon oath at one time, and a directly contradictory statement at another. *R. v. Zumeerun* (6 W. R. 65), *R. v. Palany Chetty* (4 Mad. H. C. R. 51), and *R. v. Mahomed Hoomayoon Shah* (13 B. L. R. 324), followed: *Empress v. Niaz Ali* (I. L. R., 5 All. 17) overruled. *Per Duthoit, J.*—Every possible presumption in favour of a reconciliation of the two statements should be made, and it must be found that they are absolutely irreconcilable before a conviction can be had upon the ground that one of them is necessarily false. The English cases upon this subject are irrelevant to the interpretation of the law of India, since the Indian Legislature has not followed the law of England in regard to perjury.—*Trimble v. Hill* (L. R., Ap. Cas. 342) and *Kathama Natchiar v. Dorasinga Tever* (L. R. 2 Ind. Ap. 159) referred to.—*Queen-Empress v. Ghulet, I. L. R., 7 All. 44. [Straight, Off. C.J., and Duthoit, J. July 31, 1884.]*

THE accused was charged, in the alternative, by the trying Magistrate, as follows: "I, W. W. Drew, Magistrate, First Class, hereby charge you, Rámji Sájabáráo, as follows: 'That you, on or about the 13th day of October 1882, at Nandarpadá, stated that you had seen Vishnu Vaman and Máhádu Lakshman carrying teakwood from Gohe Forest to Náráyan Rámchandra, range forest officer, and on 14th February 1885 you stated on oath before the First-class Magistrate at Pen, at the trial of these persons, that you did not see where they had brought the wood from, and thereby committed an offence punishable under s. 182 or s. 193 of the Penal Code (Act XLV. of 1860) and within my cognizance; and I hereby direct that you, Rámji Sájabáráo, be tried by the said Court on the same charge.'" At the trial the accused asserted the truth of the former of these two statements, and denied having made the other. The Magistrate was unable to find which of them was false, and convicted the accused, in the alternative, either under s. 182 or s. 193 of the Penal Code (Act XLV. of 1860). *Held* that the charge was bad in law, being an alternative charge in a form forbidden by s. 233 of the Criminal Procedure Code (Act X. of 1882), which directs that, for every distinct offence of which any person is charged, there shall be a separate charge. Nor could the accused be tried upon a charge framed in the alternative as in the form given in sch. 5-23 (4) of the Criminal Procedure Code (Act X. of 1882). For, upon the facts alleged, there was no way of charging him with one distinct offence on the ground of self-contradiction. He could not successfully be charged, under s. 193 of the Penal Code (Act XLV. of 1860), on contradictory statements, because he only made one deposition, in which there were no discrepancies; and, similarly, he could not be charged under s. 182 of the Penal Code, for he only once gave information to a public servant. *Held* also that, having regard to ss. 225, 232, and 537 of the Criminal Procedure Code (Act X. of 1882), the accused, convicted upon such a charge, must be held to have been misled in his defence, and his conviction and sentence reversed. In charges founded upon supposed contradictory statements every presumption in favour of the possible reconciliation of the statements must be made. Under s. 172 of the Forest Act (VII. of 1878), a forest-officer is a public servant within the meaning of the Penal Code (Act XLV. of 1860). Any information given to him with the intent mentioned in s. 182 of the Penal Code is punishable under that section, whether that information is volunteered by the informant, or is given in answer to questions put to him by that officer.—*Queen-Empress v. Rámji Sájabáráo, I. L. R., 10 Bom. 124. [Nánábhái Haridás and Wedderburn, JJ. Sep. 7, 1885.]*

#### FALSE EVIDENCE, ABETMENT OF.

UNDER s. 193 it is an offence to suppress evidence. Thus, where the accused asked a witness to suppress certain facts in giving his evidence before a Magistrate on a charge of defamation, it was held that this constituted abetment of the offence of giving false evidence in a stage of a judicial proceeding.—*In re Andy Chetty, 2 Mad. H. C. R. 438. [Frere and Innes, JJ. 1865.]*

WHERE C falsely represented himself as U, the writer of a document signed by U, and T, knowing that C was not U, and had not written such document, produced C as U,



FACTS showing that an accused person had dug a hole, intending to place salt therein in order that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, would justify a conviction for an attempt to fabricate false evidence.—*Queen v. Nunda*, 4 N. W. P. 133. [Turner and Spankie, JJ. Aug. 16, 1872.]

THE prisoner was convicted under s. 195 of the Penal Code of fabricating false evidence with intent to procure the conviction of a certain person of an offence. The prisoner's act was committed in a most public manner, and was not calculated to lead to the conviction of the person; nor did it appear that the prisoner took any steps to secure his conviction. *Held* that the conviction of the prisoner could not be sustained.—*Queen v. Shib Dyal*, 5 N. W. P. 183. [Jardine, J. June 7, 1873.]

IT is not necessary, under s. 194, Penal Code, that the false evidence which is given should be evidence given in a Court of justice. Such statement, if made to a police-officer, would amount to the offence of giving false evidence as defined by s. 191 taking s. 118 of the Code into consideration.—*Queen v. Nim Chand Mookerjee and another*, 20 W. R. 41. [Markby and Birch JJ. June 17, 1873.] Overruled by *Empress v. Kassim Khan*, 8 C. L. R. 300; 1 L. R., 7 Cal. 121.

NEITHER the words "shall answer all questions" in s. 118 of the Code of Criminal Procedure, nor the words "shall be bound to answer all questions" in s. 119 of the same Code, constitute "an express provision of the law to state the truth" within the meaning of s. 191 of the Penal Code. Ss. 118 and 119 are merely intended to oblige persons to give such information as they can to the police in answer to the questions which may be put to them, and they impose no legal obligation on those persons to speak the truth.—*Empress v. Kassim Khan*, and *Empress v. Mussamut Dahia*, 1 L. R., 7 Cal. 121; 8 C. L. R. 300. [Garth, C.J., and Pontifex, Morris, Mitter, and McDonell, JJ. April 13, 1881.] Explained in *Nathu Sheikh v. Empress*, 1 L. R., 10 Cal. 405. Overrules *Queen v. Nim Chand Mookerjee*, 20 W. R. 41.

A SANCTION to prosecute, when applied for subsequently to the termination of the proceedings in course of which the offence is alleged to have been committed ought not to be granted, unless the person against whom the sanction is applied for had had notice of the application and an opportunity of being heard.—*Abbilakh Singh v. Khub Lal*, 1 L. R., 10 Cal. 1100. [Field and Norris, JJ. Aug. 19, 1884.] Referred to and distinguished in *Krishnanund Das v. Hari Bera*, 1 L. R., 12 Cal. 58, *supra*, p. 171.

A, WITH intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under s. 211 and 194 of the Penal Code.—Crim. Pro. Code (Act X. of 1882), s. 235, *ill. f.*

<p><b>195.</b> Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by this Code "or the law of England" * is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.</p>	<p>Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.</p>
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#### Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life, or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to such transportation or imprisonment, with or without fine.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

\* The words quoted have been inserted by Act XXVII. of 1870, s. 7.



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it permanently his own property, but merely to make use of it for the purpose of aiding him in escaping.—*Adu Shikdar v. Queen-Empress*, I. L. R., 11 Cal. 635. [Mitter and Norris JJ. May 29, 1885.]

L and N were tried by a Sessions Court on charges of dacoity and murder. The jury returned a verdict of guilty on both charges. The Judge, contrary to the provisions of s. 269 of the Code of Criminal Procedure, treated the jury as assessors in respect of the charge of murder, and, convicting L and N of dacoity, acquitted them of murder. *Held* that the irregular procedure of the Judge could not deprive the verdict of the jury of its proper legal effect.—*Queen-Empress v. Lakshmana*, I. L. R., 9 Mad. 42. [Muttusami Ayyar and Hutchins, JJ. Aug. 27, 1885.]

*HELD* that the island of Perim, having been occupied with a view to its permanent retention by officers of the Government of Bombay, became a part of British India within the definition of Stat. 21 and 22 Vic., c. 106, and vested in Her Majesty along with the other Indian territories under that Act, which became law on 2nd September 1858. The Penal Code (Act XLV. of 1860) and the Code of Criminal Procedure (Act X. of 1882) extend in their entirety to the whole of British India, and, therefore, to the island of Perim. S. 7 of the Criminal Procedure Code (Act X. of 1882) gives to the Local Government the power to alter the local limits of Sessions Divisions, and continues the Divisions existing when that Code came into force. A notification was issued by the Government of Bombay on the 6th May 1884 under the above section, including the island of Perim within the Sessions Division or District of Aden, and empowering the officer from time to time commanding the troops stationed at Perim, in virtue of his office, to exercise the powers of a Magistrate of the Second Class within the island, and to commit persons for trial to the Court of Session at Aden. *Held*, having regard to the language of Act II. of 1864, that for the purposes of s. 7 of the Criminal Procedure Code (Act X. of 1882) the Resident's Court at Aden might be considered as a Court of Session, and that the local area to which Act II. of 1864 applied was the Sessions Division which was in existence at the date of the above notification when the limits thereof were altered by the inclusion of the island of Perim. A prisoner charged with having committed murder in the island of Perim was committed by the Magistrate at Perim to be tried before the Political Resident at Aden. Having been found guilty and sentenced to death, he appealed to the High Court of Bombay. By the Aden Act (II. of 1864), s. 29, it is provided that "no appeal shall lie from an order or sentence passed by the Resident in any criminal case." The High Court, however, admitted the appeal, being doubtful as to whether the above provision applied to cases arising in the island of Perim.—*Queen-Empress v. Mangal Tekchand*, I. L. R., 10 Bom. 258. [Birdwood and Jardine, JJ. Dec. 6, 1885.]

S. 84 of the Penal Code lays down the legal test of responsibility in cases of alleged unsoundness of mind. It is by this test, as distinguished from the medical test, that the criminality of an act is to be determined. The accused killed his two young children with a hatchet. The reason given for the crime was that, while he was laid up with fever, the crying of the children annoyed him. It was alleged that the fever had made him irritable and sensitive to sound, but it did not appear that he was delirious at the time of perpetrating the crime. There was no attempt at concealment, and the accused made a full confession. *Held* that as the accused was conscious of the nature of his act, he must be presumed to have been conscious of its criminality. He was, therefore, guilty of murder.—*Queen-Empress v. Lakshman Dagdu*, I. L. R., 10 Bom. 512. [Birdwood and Jardine, JJ. Mar. 4, 1886.]

THE High Court cannot, under s. 526 of the Criminal Procedure Code (Act X. of 1882), any more than under s. 25 of the Civil Procedure Code (Act XIV. of 1882), direct the transfer of a case, which is not properly before a Subordinate Court of competent jurisdiction to receive and try it. *Peary Lal Mozoomdar v. Komul Kishore Dassi* (I. L. R., 6 Cal. 30) followed. *Queen-Empress v. Thaku* (I. L. R., 8 Bom. 312) distinguished. Under s. 5 of the Scheduled Districts Act (XIV. of 1874), the Local Government cannot, by extending an Act which is of necessarily restricted application, make its provisions applicable to an entirely new subject-matter, *viz.*, the litigation of a new local area. Accordingly, where the Government of Bombay issued the following notification, No. 823 of 1886: "In exercise of the powers conferred by s. 5 of the Scheduled Districts Act (XIV. of 1874), the Governor of Bombay in Council is pleased, with the previous sanction of the President in Council, to extend to its island of Perim the whole of Act II. of 1864 of the Governor-General in Council, with the exception of ss. 2, 17, and 23. The Governor in Council is further pleased, in exercise of the powers conferred by s. 6 of the Scheduled Districts Act (XIV. of 1874), and by any other enactment, to direct that the Resident at Aden



# CHAP. XVII.] *OFFENCES AGAINST PROPERTY.* [SECS. 448-451.

A PLEA of right to possession is no answer to a charge of rioting by making a forcible entry on land cultivated by a trespasser, who is in possession, and opposes the entry.—*Appavu v. Queen*, I. L. R., 6 Mad. 245. [Innes, J. Dec. 19, 1882.]

**448.** Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Punishment for house-trespass. Any Mag. Cognizable. Warrant. Bailable. Comp.

THE prisoner entered a house for the purpose of committing an assault, and, in carrying out that intention, caused grievous hurt. In convicting and punishing him for the substantive offence (grievous hurt), *held* that it was not necessary to pass a separate sentence for the offence of house-trespass.—*Queen v. Bassoo Rannah*, 2 W. R. 29. [Kemp and Glover, JJ. Jan. 30, 1865.]

HOUSE-TRESPASS and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly, armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.—*Queen v. Surroop Napat and others*, 3 W. R. 54. [Kemp and Setou-Karr, JJ. July 15, 1865.]

A ENTERED the house of B without the latter's permission, and committed adultery with B's wife. *Held* that A could be separately convicted of and punished for both the adultery and house-trespass, as they were distinct offences; but that, under the circumstances, B's wife was by law incapable of committing abetment of the house-trespass.—*Crown v. Sheikh Mungli, Panj. Rec.*, No. 5 of 1871.

A PRISONER charged with dacoity and riot, and acquitted, cannot be convicted of house-trespass, if the latter charge was not read out or explained to him, and he was not called on to plead to it.—*Queen v. Salamut Ali and others*, 23 W. R. 59. [Kemp and Morris, JJ. Mar. 31, 1875.]

**449.** Whoever commits house-trespass in order to the committing of any offence punishable with death shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to commit offence punishable with death. Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 449 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

**450.** Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to commit offence punishable with transportation for life. Ditto:

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 450 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

**451.** Whoever commits house trespass in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence\* intended to be committed is theft, the term of the imprisonment may be extended to seven years.

House-trespass in order to the commission of an offence punishable with imprisonment. Any Mag. Cognizable. Warrant. Bailable. Not comp. \* Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.

A CHARGE under s. 451 must charge the accused with committing house-trespass with intent to commit some *specific* offence punishable with imprisonment.—*Queen v. Mehar Dowalia and others*, Appellants, 16 W. R. 53. [Kemp, Offg. C.J., and Ainslie, J. Oct. 6, 1871.]

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# THE INDIAN PENAL CODE.

## ACT NO. XLV. OF 1860.\*

RECEIVED THE G.-G.'s ASSENT ON THE 6TH OCTOBER 1860.

### CHAPTER I.

#### INTRODUCTION.

WHEREAS it is expedient to provide a General Penal Code for British India; It is enacted as follows:—

1. This Act shall be called **THE INDIAN PENAL CODE**, and shall take effect on and from the first day of January 1862† throughout the whole of the territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, chapter 106, entitled “An Act for the better government of India,” except the Settlement of Prince of Wales’s Island, Singapore, and Malacca.

Act V. of 1867 now extends the Penal Code to the above-mentioned settlement.

2. Every person shall be liable to punishment under this Code, and not otherwise, for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories on or after the said first day of January 1862.†

*Punishment of offences committed within the said territories.*

*Every person.*—Stat. 3 and 4 Will. IV., c. 85, empowers the Governor-General in Council “to make laws and regulations for repealing, amending, or altering any laws or regulations whatever now in force, or hereafter to be in force, in the territories of India, or any part thereof, and to make laws and regulations for all persons, whether British or native, foreigners or otherwise, and for all Courts of Justice, whether established by His Majesty’s Charters or otherwise, and the jurisdictions thereof; and for all places and things whatsoever, within and throughout the whole and every part of the said territories; and for all servants of the said Company within the dominions of Princes and States in alliance with the said Company, except that he shall not have the power of making any laws or regulations which shall in any way repeal, vary, suspend, or affect any of the provisions of this Act, or any provisions of the Acts for punishing mutiny and desertion of officers and soldiers, whether in the service of Her Majesty or the said Company; or any provision or Act hereafter to be passed in any wise affecting the said Company or the said territories, or the inhabitants thereof; or any laws which shall in any way affect any prerogative of the Crown or the authority of Parliament, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or the sovereignty or dominion of the said Crown over any part of the said territories.” The question of jurisdiction, however, is dealt with by the Code of Criminal Procedure.

\* As amended by Acts XIV. and XXVII. of 1870, Act XIX. of 1872, Act XII. of 1881, Acts VIII. and X. of 1882, and Act X. of 1886.

† See Act VI. of 1861, which altered the date of the commencement of the operation of the Code from 1st May 1861 to 1st January 1862.

*And not otherwise.*—By the expression “and not otherwise” is meant that no person can be punished for any act which amounts to an offence under the Code otherwise than according to the provisions thereof, except when the same act is made punishable by some local or special law.—Commissioners’ Second Rep., ss. 537, 538.

*Within the said Territories.*—Stat. 21 and 22 Vic., c. 106, s. 1, defines the territories throughout which this Act is to take effect to be all territories then in the possession or under the government of the East India Company and all territories which may become vested in Her Majesty by virtue of any rights vested in, or which might, but for the passing of that Act, have been exercised by, the said Company in relation to any territories.

THE subject of an Independent State, though not amenable to the British Courts on a charge of culpable homicide committed out of British territories, may be so amenable on a charge of kidnapping from those territories. The Calcutta High Court, under Act I. of 1849, confirmed the conviction of two persons for murder committed in the independent territory of Kuch Behar, they being British subjects, and only temporary residents of that State.—*Queen v. Dhurmonarain Moitro and others*, 1 W. R. 30. [Kemp and Glover, JJ. Dec. 9, 1864.]

A PERSON, who is admittedly a subject of the British Government, is liable to be tried by the Courts of this country for acts done by him, whether wholly within or wholly without, or partly within and partly without, the British territory in India, provided they amount together to an offence under the Penal Code.—*Queen v. Moulvie Ahmudoolah*, 2 W. R. 60. [Trevor and Loch, JJ. April 13, 1865.]

IN prosecuting a British subject for an offence committed on board a British ship upon the high seas, *held* (*dubitante*, Phear, J.) that he must be charged with an offence under the English law; 2, that the punishment must be according to English law; 3, that the trial must be according to the procedure of the local Court. Therefore, where a British subject was charged before the High Court with having committed an offence under 7 Will. IV. and 1. Vic., c. 85, s. 2, on board a British ship, upon the high seas, within the admiralty jurisdiction of the Court, and found guilty of an offence under 14 and 15 Vic., c. 19, s. 5, *held* that the conviction was good, and that the prisoner would be rightly punished with “rigorous imprisonment,” which is defined by s. 53 of the Penal Code to be “imprisonment with hard labour,” and that the trial had been rightly proceeded with under Act XIII. of 1865. It ought to appear upon the face of a charge that it had been delivered to the Clerk of the Crown by a Justice of the Peace or a Magistrate, but its not so appearing is a formal defect only, to which objection can only be taken under s. 41 of Act XVIII. of 1862 before the jury has been sworn, and it is not ground for arrest of judgment.—*Queen v. Thompson*, 1 B. L. R. O. Cr. 1. [Peacock, C.J., Phear and Macpherson, JJ. Sep. 3, 1867.]

WHERE a findal of a small vessel had been convicted of criminal breach of trust which appeared to have been committed in the Portuguese Possession of Goa, but no order was recorded by the Sessions Judge of Mangalore, who tried the case under s. 9 of Act I. of 1849, *held* that there ought to be a new trial.—*Pro.*, Jan. 10, 1870, 6 Mad. H. C. R. Ap. 13.

THE substantive law applicable to a British-born subject tried in the High Court of Judicature at Bombay for destroying a British ship on the high seas, at a distance of more than three miles from the shores of British India, is the English law, and not the Penal Code, notwithstanding the provisions of Stat. 30 and 31 Vic., c. 124, s. 11. The same substantive law is applicable to prisoners who conspire together in Bombay to destroy such ship on the high seas, and such ship is so destroyed in consequence. The procedure applicable in such cases is the ordinary criminal procedure of the High Court. The question whether the Indian Legislature has power to legislate with reference to offences committed on the high seas considered. There is not any Act of the Indian Legislature now in force which provides for the offence of destroying a ship when committed at a greater distance than three miles from the coast, or for the abetment in British India of such an offence so committed.—*Reg. v. Elmstone, Whitwell, et al*, 7 Bom. H. C. R. 89. [Westropp, C.J., and Bayley and Green, JJ. July 22, 30, 1870.]

AN offence committed on the high seas, but within three miles from the coast of British India, as being committed within the territorial limits of British India, is punishable under the provisions of the Penal Code. The ordinary Criminal Courts of the country have jurisdiction over such offences by virtue of the Stat. 12 and 13 Vic., c. 96, ss. 2 and 3, extended to India by Stat. 23 and 24 Vic., c. 88. *Seemle.*—The Governor-General of India in Council has no power to legislate for offences committed on the high seas outside the territorial limits of British India, though he has power to legislate in



was convicted on all the charges; but, the jurisdiction of the Court having been challenged on his behalf, the question was reserved. *Held per* Sargent and Melvill, JJ. (West, J., *dissentiente*), "that the bills of exchange having been stolen at Mauritius, in which island the Penal Code is not in force, could not be regarded as "stolen property" within the provisions of s. 410, so as to render the person receiving them at Bombay liable under s. 411; that the High Court of Bombay had, therefore, no jurisdiction; and that the conviction must be quashed." Previously to the trial at the Sessions the prisoner had applied to the Court for commissions to Pondicherry and Mauritius to take evidence on his behalf. The application was refused on the ground that the High Court had no authority to issue a commission in such a case, but the learned Judge (West, J.) reserved the question for the Full Court. *Held* that the High Court had no power to issue a commission out of the jurisdiction in a criminal case on an application by the accused.—*Empress v. S. Moorga Chetty*, I. L. R., 5 Bom. 338. [Sargent, Melvill, and West, JJ. April 28, May 3, 1881.]

B, entrusted with rice at M (a port in British India) for conveyance to C (also a port in British India), took the rice to G, a port in foreign territory, and there sold it. He was convicted at M of criminal breach of trust as a carrier under s. 407 of the Penal Code. *Held* that the Sessions Court at M had no jurisdiction to try the offence under the Code of Criminal Procedure. *Held* also that no offence was committed on the high seas so as to give the Court jurisdiction under 12 & 13 Vic., c. 29, extended by 23 & 24 Vic., c. 88.—*Bāpu Daldi v. Reg.*, I. L. R., 5 Mad. 23. [Iunes and Muttusāmi Ayyar, JJ. Feb. 26, 1882.]

**3. Any person liable, by any law passed by the Governor-General of India in Council, to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this Code for any act committed beyond the said territories in the same manner as if such act had been committed within the said territories.**

Punishment of offences committed beyond, but which by law may be tried within, the territories.

**4. Every servant of the Queen shall be subject to punishment under this Code for every act or omission contrary to the provisions thereof, of which he, whilst in such service, shall be guilty on or after the said first day of May 1861, within the dominions of any Prince or State in alliance with the Queen, by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been, or may hereafter be, made in the name of the Queen by any Government of India.**

Punishment of offences committed by a servant of the Queen within a foreign allied State.

THE following sections of the Criminal Procedure Code (Act X. of 1882) bear on s. 4 of the Penal Code:—

"188. When a European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India, he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found; provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent (if there be one) for the territory in which the offence is alleged to have been committed certifies that, in his opinion, the charge ought to be inquired into in British India; provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in British India, shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

"189. Whenever any such offence as is referred to in s. 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed, shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

"190. In ss. 188 and 189, the expression "Political Agent" means and includes (a) the principal officer representing the British India Government in any territory beyond the limits of British India; (b) any officer in British India appointed by the Governor-General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

THE above section applies to servants of the Queen who commit offences against this Code within the dominions of any Prince or State in alliance with the Queen. The High Court has jurisdiction to try a European British subject for an offence against this Code committed in the territories of a Native Prince in alliance with Government on charges framed under this Code.—Reg. v. Chill, 8 Bom. H. C. R. 92. [Sargent, J. July 3, 1871.]

A EUROPEAN British subject, committed by a Justice of the Peace in Mysore for trial by the Judicial Commissioner of Mysore on a charge under s. 348 of the Penal Code, was convicted on 10th March 1880. *Held* that the commitment and conviction were illegal. *Quære*.—Whether, when a European British subject in Mysore, being a Christian, is accused of an offence not punishable with death or transportation for life, a commitment to the High Court at Madras would be legal?—Ward v. Reg., I. L. R., 5 Mad. 33. [Turner C.J., and Muttusami Ayyar, J. May 6, 1880.]

## 5. Nothing in this Act is intended to repeal, vary, suspend, or affect

Certain laws not to be affected by this Act. chap. 85, or of any Act of Parliament passed after that Statute in any wise affecting the East India Company, or the said territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty, or of any special or local law.

WHEN a prisoner was convicted of making a false declaration under s. 465 of the Penal Code, the High Court upheld the conviction, though the offence also came under a special law—the Ship Registry Act (X. of 1841), s. 5.—Mad. H. C. Rulings of 1865 on g. 5.

A CONVICTION under a special law (e.g., s. 29, Act V. 1861) should not be quashed merely because the facts would cover an offence punishable under the Penal Code.—Queen v. Kassimuddin, Constable, 8 W. R. 55; 4 Wyman's Rev., Civ. and Crim. Reporter, 17. [Jackson and Hobhouse, JJ. July 30, 1867.]

A CONVICTION under the Penal Code, and also under a special law, in respect of one and the same offence, is illegal.—Queen v. Hussun Ali, 5 N. W. P. 49. [Turner, J. Feb. 22, 1873.]

THE provisions of s. 174 of the Penal Code are not in conflict with the special provisions of ss. 15 and 16 of Reg. IV. of 1816 (Mad.). In ordinary cases disobedience to the summons of a village-munsif should be dealt with under the Regulation. But if a charge is laid under the Penal Code, the Criminal Court must deal with it.—Queen v. Rámachandráppa, I. L. R., 6 Mad. 249. [Turner, C.J., and Muttusami Ayyar, J. Jan. 25, 1883.]

## CHAPTER II.

### GENERAL EXPLANATIONS.

## 6. Throughout this Code, every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled "General Exceptions," though those exceptions are not repeated in such definition, penal provision, or illustration.

Definitions in the Code to be understood subject to exceptions.

### Illustrations.

(a.) The sections, in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(b.) A, a police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

7. Every expression which is explained in any part of this Code is used in every part of this Code in conformity with the explanation.  
Sense of expression once explained.

8. The pronoun "he" and its derivatives are used of any person, whether male or female.  
Gender.

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.  
Number.

10. The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.  
"Man" "Woman."

11. The word "person" includes any Company or Association, or body of persons, whether incorporated or not.  
"Person."

12. The word "public" includes any class of the public or any community.  
"Public."

13. The word "Queen" denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.  
"Queen."

14. The words "servants of the Queen" denote all officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Victoria, chapter 106, entitled "An Act for the better government of India," or by or under the authority of the Government of India or any Government.  
"Servants of the Queen."

15. The words "British India" denote the territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, chapter 106, entitled "An Act for the better government of India," except the Settlement of the Prince of Wales's Island, Singapore, and Malacca.  
"British India."

16. The words "Government of India" denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone as regards the powers which may be lawfully exercised by them or him respectively.  
"Government of India."

17. The word "Government" denotes the person or persons authorized by law to administer executive government in any part of British India.  
"Government."

18. The word "Presidency" denotes the territories subject to the Government of a Presidency.  
"Presidency."

19. The word "Judge" denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.  
"Judge."

*Illustrations.*

(a.) A Collector exercising jurisdiction in a suit under Act X. of 1859 is a Judge.

(b.) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(c.) A member of a pancháyat which has power, under Regulation VII., 1816, of the Madras Code, to try and determine suits, is a Judge.

(d.) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court is not a Judge.

**20.** The words "Court of Justice" denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

*Illustration.*

A pancháyat acting under Regulation VII., 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

**21.** The words "public servant" denote a person falling under any of the descriptions hereinafter following, namely :—

"Public-servant."

*First.*—Every covenanted servant of the Queen ;

*Second.*—Every commissioned-officer in the military or naval forces of the Queen while serving under the Government of India, or any Government ;

*Third.*—Every Judge ;

*Fourth.*—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties ;

*Fifth.*—Every jurymán, assessor, or member of a pancháyat assisting a Court of Justice or public servant ;

*Sixth.*—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice or by any other competent public authority ;

*Seventh.*—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement ;

*Eighth.*—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience ;

*Ninth.*—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue-process, or to investigate or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty ;

*Tenth.*—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town, or district.

*Illustration.*

A municipal commissioner is a public servant.

*Explanation 1.*—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

*Explanation 2.*—Wherever the words “public servant” occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

CONVICT-WARDEES are “public servants” within the meaning of s. 223 of the Penal Code.—*Queen v. Kalla Chand Moitree*, 7 W. R. 63. [Seton-Karr and Macpherson, JJ. May 6, 1867.]

AN engineer who receives and pays to others municipal moneys is a public servant within the meaning of s. 21, cl. 10, of the Penal Code, although he may not have the power of sanctioning the expenditure of such moneys.—*Reg. v. Nantamrám Uttamrám*, 6 Bom. H. C. R. 64. [Gibbs and Lloyd, JJ. Sep. 29, 1869.]

THE naib-nazir is a public servant within the meaning of s. 409 of the Penal Code and not the mere private servant of the nazir.—*Queen v. Mahmood Hossein*, 2 N. W. P. 298. [Spankie, J. July 18, 1870.]

AN occasional or supernumerary peon appointed under the order of the Board of Revenue in accordance with s. 6, Act V. of 1863 (B.C.), and paid under that section by fees whenever employed to serve process, is a public servant under cl. 9, s. 21 of the Penal Code, and, as such, may be tried for receiving an illegal gratification under s. 161 of that Code.—*Queen v. Bamkristo Doss and another*, 16 W. 27; 7 B. L. R. 446. [Ainslie and Paul, JJ. July 24, 1871.]

✓ THE word “officer” in s. 21, cl. 9, of the Penal Code, means a person employed to exercise to some extent a delegated function of Government. He must be either himself armed with some authority or representative character, or his duties must be immediately auxiliary to those of some one who is so armed. Hence an *izáphaddár*, i. e., a lessee of a village who has undertaken to keep an account of its forest-revenues, and pay a certain proportion to the Government, keeping the remainder for himself, is not an officer, and, therefore, not a public servant within the meaning of s. 21.—*Reg. v. Rámájjiráv Jivbájjiráb*, 12 Bom. H. C. R. 1. [West and Nánábhái Haridás, JJ. Feb. 10, 1875.]

A PERSON appointed by the Government Solicitor with the approval of Government and under an arrangement by the Governor-General in Council to act as Prosecutor in the Calcutta Police Courts is a public servant within the meaning of s. 21 of the Penal Code.—*Empress v. Butto Kristo Doss*, 1. L. R., 3 Cal. 497. [Jackson and Cunningham, JJ. Mar. 4, 1878.]

THE manager of a Court of Wards’ estate paid into a Bank, carrying on the treasury business of the Government, a sum of money on behalf of Government. B, a poddar in the Bank, demanded and took a reward for his trouble in receiving the money. On B being prosecuted and charged under s. 161 of the Penal Code, *held* that, although the money might have been paid on account of Government, it was on behalf of the Bank, and not on behalf of the Government, that the money was received by the accused; and that the poddar was a servant of the Bank only, and not a public servant within the meaning of cl. 9, s. 21 of the Penal Code.—In the Matter of the Petition of Modun Mohun, 1. L. R., 4 Cal. 376. [Ainslie and Broughton, JJ. Dec. 10, 1878.]

A PEON employed by the manager of an estate under the charge of the Court of Wards is not a public servant within the meaning of s. 21 of the Penal Code.—*Queen v. Aráyi*, 1. L. R., 7 Mad. 17. [Turner, C.J. May 10, 1883.]

A CARTER employed by Government is not a public servant within the meaning of s. 21 of the Penal Code.—*Queen v. Nachimuttu*, 1. L. R., 7 Mad. 18. [Turner, C.J. June 31, 1883.]

ANY person, whether receiving pay or not, who chooses to take upon himself duties and responsibilities belonging to the position of a public servant, and performs those duties, and accepts those responsibilities, and is recognised as filling the position of a public servant, must be regarded as one, and it does not lie in his mouth to say subsequently that, notwithstanding his performance of public duties, and the recognition by others of such performance, he is not a "public servant" within the definition contained in s. 21 of the Penal Code.—*Queen-Empress v. Parmeshar Dat*, I. L. R., 8 All. 201. [Straight, J. Feb. 5, 1886.]

**22.** The words "moveable property" are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to any thing which is attached to the earth.

**23.** "Wrongful gain" is gain by unlawful means of property to which the person gaining is not legally entitled.

"Wrongful loss" is the loss by unlawful means of property to which the person losing it is legally entitled.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

**24.** Whoever does any thing with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing "dishonestly."

**25.** A person is said to do a thing fraudulently if he does that thing with intent to defraud, but not otherwise.

**26.** A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing, but not otherwise.

**27.** When property is in the possession of a person's wife, clerk, or servant, on account of that person, it is in that person's possession within the meaning of this Code.

*Explanation.*—A person employed temporarily, or on a particular occasion, in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

**28.** A person is said to "counterfeit," who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

*Explanation.*—It is not essential to counterfeiting that the imitation should be exact.

**29.** The word "document" denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

*Explanation 1.*—It is immaterial by what means, or upon what substance, the letters, figures, or marks, are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

*Illustrations.*

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used, or which may be used, as evidence, is a document.

A writing containing directions or instructions is a document.

*Explanation 2.*—Whatever is expressed by means of letters, figures, or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

*Illustration.*

A writes his name on the back of a bill of exchange payable to his order. The meaning of the endorsement as explained by mercantile usage is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder," or words to that effect, had been written over the signature.

WHERE a draft petition was prepared, with the intention of being used as evidence of a matter, it was *held* that it fell within the terms of s. 29 of the Penal Code; and, as it contained false statements calculated to injure the reputation of a person, the offence was held to fall within s. 469 of the Penal Code.—*Sheefait Ally and others, Revision of Proceedings in the Case of*, 10 W. R. 61; 2 B. L. R. A. Cr. 12. [Loch and Glover, JJ. Dec. 14, 1868.]

30. The words "valuable security" denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

*Illustration.*

A writes his name on the back of a bill of exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a "valuable security."

A SETTLEMENT of accounts in writing, though not signed by any person, is "a valuable security" within the definition of s. 30 of the Penal Code.—*Ex-parte Kapalayaya Saraya*, 2 Mad. H. C. R. 247. [Phillips and Holloway, JJ. Nov. 26, 1864.]

A COPY of a lease is not "a valuable security" within the meaning of s. 30 of the Penal Code.—*Reg. v. Khushál Hiráman and Indragír*, 4 Bom. H. C. R. 28. [Couch, C.J., and Newton, J. July 17, 1867.]

A DEED of divorce is a "valuable security" within the meaning of s. 30 of the Penal Code. The presenting of a forged document of such a nature for registration, and obtaining registration, would be "using" within s. 471 of that Code.—*Queen v. Azimooddeen and another*, 11 W. R. 15. [Jackson and Glover, JJ. Mar. 3, 1869.]

A SANAD conferring a title of dignity on a person is not "a valuable security" within the meaning of the Penal Code.—*Jan Mahomed and Jabar Mahomed v. Queen-Empress; Wari Meah v. Queen-Empress*, 1. L. R., 10 Cal. 584. [Mitter and Norris, JJ. April 17, 1884.]

"A will."

31. The words "a will" denote any testamentary document.

**32.** In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

Words referring to acts include illegal omissions.

IN recommending that illegal omissions should be treated as acts, the Indian Law Commissioners state as follows: "We cannot defend this rule better than by giving a few illustrations of the way in which it will operate. A omits to give Z food, and by that omission voluntarily causes Z's death. Is this murder? Under our rule it is murder if A was Z's jailor directed by law to furnish Z with food. It is murder if Z was the infant child of A, and had, therefore, a legal right to sustenance, which right a Civil Court would enforce against A. It is murder if Z was a bed-ridden invalid, and A, a nurse, hired to feed Z. It is not murder if Z is a beggar who has no other claim on A than that of humanity. A omits to tell Z that a river is swollen so high that Z cannot safely attempt to ford it, and by this omission voluntarily causes Z's death. It is murder if A is a peon stationed by authority to warn travellers from attempting to ford the river. It is murder if A is a guide who has contracted to guide Z. It is not murder if A is a person on whom Z has no other claim than that of humanity. A savage dog fastens on Z; A omits to call off the dog, knowing that, if the dog be not called off, it is likely to kill Z. Z is killed. This is murder in A if the dog belonged to A, inasmuch as the omission to take proper order with the dog is illegal (s. 289). But if A be a mere passer-by, it is not murder."—P. C. Note M. 55.

SPEAKING may be considered an act. Take the following instance: "Suppose it to be proved to the entire conviction of a Criminal Court that Z, the deceased, was in a very critical state of health; that A, the heir to Z's property, had been informed by Z's physicians that Z's recovery absolutely depended on his being kept quiet in mind, and that the smallest mental excitement would endanger his life; that A immediately broke into Z's sick-room, and told him a dreadful piece of intelligence which was a pure invention, that Z went into fits and died on the spot, that A had afterwards boasted of having cleared the way for himself to a good property by this artifice. These things being fully proved, no judge could doubt that A had voluntarily caused the death of Z; nor do we perceive any reason for not punishing A in the same manner in which he would have been punished if he had mixed arsenic in Z's medicine."—Commissioners' First Report, s. 243, P. C. Note M. 59.

**33.** The word "act" denotes as well a series of acts as a single act: the word "omission" denotes as well a series of omissions as a single omission.

**34.** When a criminal act is done by several persons "in furtherance of the common intention of all,"\* each of such persons is liable for that act in the same manner as if it were done by him alone.

Act done by several persons in furtherance of common intention.

AN American jurist (Bishop, §439) thus explains the law upon the subject: "The true view is doubtless as follows: Every man is responsible criminally for what of wrong flows directly from his corrupt intention, but no man intending wrong is responsible for an independent act of wrong committed by another. If one person sets in motion the physical power of another person, the former is criminally guilty for its results. If he contemplated the result, he is answerable, though it is produced in a manner he did not contemplate. If he did not contemplate the result in kind, yet if it was the ordinary effect of the cause, he is responsible. If he awoke into action an indiscriminate power, he is responsible. If he gave directions vaguely and incautiously, and the person receiving them acted according to what might be presumed to have been his understanding of them, he is responsible. But, if the wrong done was a fresh and independent wrong springing wholly from the mind of the doer, the other is not criminal therein, merely because, when it was done, he was intending to be a partaker with the doer in a different wrong. These propositions may not always be applied readily to cases arising, yet they seem to furnish the true rules."

THE following remarks of Sir Barnes Peacock illustrate the meaning of the above section: "If the object and design of those who seized Amoordee was merely to take him to the thana on a charge of theft, and it was not part of the common design to beat him

\* The words quoted have been added by the amending Act (XXVII. of 1870), s. 1.



they would not all be liable for the consequence of the beating, merely because they were present. It is laid down that, when several persons are in company together, engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits any offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention. It is also said that although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who committed it, he will not be a felon, merely because he did not attempt to prevent it, or to apprehend the felon. But if several persons go out together for the purpose of apprehending a man and taking him to the thana on a charge of theft, and some of the party, in the presence of the others, beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on, without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties, and acting in concert, and that the beating was in furtherance of a common design. I do not know what the evidence was. All I wish to point is, that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."—*Queen v. Gora Chand Gope and others*, 5 W. R. 45; B. L. R. Sup. Vol. 443; 1 Ind. Jur. N. S. 177; 1 Wyman's Rep., Civ., and Crim. Rep. 43. [Peacock, C.J., Trevor and Norman, JJ. Mar. 3, 1866.]

WHERE a blow is struck by A in the presence of, and by the order of, B, both are principals in the transaction; and where two persons join in beating a man, and he dies, it is not necessary to ascertain exactly what the effect of such blow was.—*Queen v. Mahomed Asger and another*, 23 W. R. 11. [Markby and McDouell, JJ. Dec. 12, 1874.]

WHERE each of several persons took part in beating a person so as to break eighteen ribs and cause his death, each of them was held to be guilty, as a principal, of the murder of the deceased.—*Queen v. Gour Chunder Dass and others*, 24 W. R. 5. [Markby and Morris, JJ. May 31, 1875.]

WHERE a prisoner is constructively guilty of murder under s. 31 of the Penal Code, it is doubtful if he can be said to have committed the offence of murder within the meaning of s. 149, so as to make other prisoners, by a double construction, guilty of murder.—In the Matter of the Petition of Jhubboo Mahton; *Empress v. Jhubboo Mahton*, 1. L. R., 8 Cal. 739; 12 C. L. R. 233. [McDonell and Field, JJ. April 28, 1882.]

### 35. Whenever an act, which is criminal only by reason of its being

<p>When such act is criminal by reason of its being done with criminal knowledge or intention</p>	<p>done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.</p>
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### 36. Wherever the causing of a certain effect, or an attempt to cause

<p>Effect caused partly by act and partly by omission.</p>	<p>that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.</p>
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#### *Illustration.*

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

### 37. When an offence is committed by means of several acts, whoever

<p>Co-operation by doing one of several acts constituting an offence.</p>	<p>intentionally co-operates in the commission of that offence by [doing any one of those acts either singly or jointly with any other person, commits that offence.</p>
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#### *Illustrations.*

(a.) A and B agree to murder Z by severally, and at different times, giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison

so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts are separate.

(b.) A and B are joint jailors, and, as such, have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(c.) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food, in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B, without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder; but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

Persons concerned in criminal act may be guilty of different offences.

**38.** Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

#### *Illustration.*

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. A, having ill will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

**39.** A person is said to cause an effect "voluntarily," when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

#### *Illustration.*

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here A may not have intended to cause death, and may even be sorry that death has been caused by his act; yet, if he knew that he was likely to cause death, he has caused death voluntarily.

**40.** Except in the chapter and sections mentioned in clauses two and three of this section, the word "offence" denotes a thing made punishable by this Code.

In Chapter IV. and in the following sections, namely, sections "64, 65, 66, 67,\* 71,"† 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word "offence" denotes a thing punishable under this Code, or under any special or local law as hereinafter defined:

And in sections 141, 176, 177, 201, 202, 212, 216, and 441, the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.‡

\* The figures "67" have been inserted by Act X. of 1886, s. 21.

† The figures quoted have been added by Act VIII. of 1882, s. 1.

‡ This section (excepting the amendments made by Acts VIII. of 1882 and X. of 1886) has been substituted by Act XXVII. of 1870, s. 2, for the one originally enacted.

AN escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour is not punishable under either s. 221 or s. 225 of the Penal Code.—*Empress v. Shasti Churn Napit*, I. L. R., 8 Cal 331; 10 C. L. R. 290. [Mitter and Maclean, JJ. Feb. 22, 1892.] Followed in the following case.

AN ORDER was issued to a police-officer, directing him to arrest K under s. 55 of the Criminal Procedure Code, as a person of bad livelihood. K, with the assistance of three others, resisted apprehension, and escaped. *Held* that K was not charged with an "offence" within the meaning of that term as defined in s. 40 of the Penal Code, and that consequently no offence made punishable by s. 221 or s. 225 of the Penal Code had been committed in connection with his evasion of arrest. *Empress v. Shasti Churn Napit* (I. L. R., 8 Cal. 331) followed.—*Queen-Empress v. Kandhaia*, I. L. R., 7 All. 67. [Mahmood and Duthoit, JJ. Aug. 7, 1884.]

"Special law."

41. A "special law" is a law applicable to a particular subject.

"Local law."

42. A "local law" is a law applicable only to a particular part of British India.

43. The word "illegal" is applicable to every thing which is an offence, or which is prohibited by law, or which furnishes ground for a civil action: and a person is said to be "legally bound to do" whatever it is illegal in him to omit.

"Illegal."

"Legally bound to do."

OMISSION to fence a well on private ground within eight yards of a highway, and open to it, is not punishable as a public nuisance.—*Queen v. Anthony*, I. L. R., 6 Mad. 280. [Innes and Kernan, JJ. Feb. 23, 1883.]

44. The word "injury" denotes any harm whatever illegally caused to any person in body, mind, reputation, or property.

"Injury."

45. The word "life" denotes the life of a human being, unless the contrary appears from the context.

"Life."

46. The word "death" denotes the death of a human being, unless the contrary appears from the context.

"Death."

47. The word "animal" denotes any living creature other than a human being.

"Animal."

48. The word "vessel" denotes any thing made for the conveyance by water of human beings or of property.

"Vessel."

49. Wherever the word "year" or the word "month" is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

"Year." "Month."

50. The word "section" denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

"Section."

51. The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

"Oath."

52. Nothing is said to be done or believed in good faith, which is done or believed without due care and attention.

"Good faith."

## CHAPTER III.

## OF PUNISHMENTS.

## Punishments.

53. The punishments to which offenders are liable under the provisions of this Code are—

*First*—Death ;

*Secondly*—Transportation ;

*Thirdly*—Penal servitude ;

*Fourthly*—Imprisonment, which is of two descriptions, namely ;

(1) Rigorous, that is, with hard labour ;

(2) Simple ;

*Fifthly*—Forfeiture of property ;

*Sixthly*—Fine.

OFFENCES which are punishable with imprisonment, and for which the offender is also liable to fine, cannot be punishable with fine only, but some term of imprisonment must be awarded, even if it be only momentary.—Reg. v. Chanviová kom Shidram Shetti, 1 Bom. H. C. R. 4 ; Reg. v. Rámá bin Rabbáji, 1 Bom. H. C. R. 34 ; Reg. v. Bahirji bin Krishnaji, 1 Bom. H. C. R. 39 ; 4 Mad. H. C. R. Ap. 18.

ACT XXIV. of 1858 provides for penal servitude as a substitute for transportation in cases of Europeans and Americans. Act VI. of 1864 makes provision for whipping. Under this Act offenders are liable to whipping either as an alternative or as an additional punishment. Juvenile offenders committing any offence not punishable with death under the Penal Code may, under s. 5 of the Whipping Act, be punished, whether for a first or any other offence, with whipping in lieu of any other punishment to which they may be liable for such offence under the Code. According to Act X. of 1892, s. 392, and *Empress v. Din Ali* (I. L. R., 6 All. 482), a juvenile offender is a person under 16 years of age.

A SENTENCE must impose a specific fine on each prisoner.—Pro., Nov. 11, 1869, 5 Mad. H. C. R. Ap. 5.

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

WHEN any person has been sentenced to punishment for an offence, the Governor-General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence, or remit the whole or any part of the punishment to which he has been sentenced. Whenever an application is made to the Governor-General in Council or the Local Government for the suspension or remission of a sentence, the Governor-General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion. If the person in whose favour a sentence has been suspended or remitted fails to fulfil the conditions prescribed by the Governor-General in Council or the Local Government, the Governor-General in Council or the Local Government, as the case may be, may cancel such suspension or remission, whereupon such person may,

if at large, be arrested by any police-officer without warrant, and remanded to undergo the unexpired portion of the sentence. Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites, or remissions of punishment.—Criminal Procedure Code (Act X. of 1882), s. 401.

The Governor-General in Council, or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it : death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.—Criminal Procedure Code (Act X. of 1882), s. 402.

**56.** Whenever any person, being a European or American, is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude, instead of transportation, according to the provisions of Act XXIV. of 1855 :

Provided that, where a European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.\*

**57.** In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

UNDER ss. 57, 376, and 511 of the Penal Code, a sentence of ten years' transportation, or of five years' rigorous imprisonment, may be passed for the offence of attempt to commit rape ; but a sentence of seven years' rigorous imprisonment, commutable under s. 59 of the Penal Code to seven years' transportation, is illegal.—Queen v. Joseph Meriam, 10 W. R. 10 ; 1 B. L. R. A. Cr. 5. [Loch and Glover, JJ. July 6, 1868.]

**58.** In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held to have been undergoing his sentence of transportation during the term of his imprisonment.

**59.** In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

IF A person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 396 of the Penal Code, but he cannot be separately convicted of murder under s. 302, and of committing dacoity under s. 395. Where the law gives the alternative punishments of death, transportation for life, and rigorous imprisonment extending to ten years, a sentence of 14 years' transportation is illegal. If the judge thinks it proper to pass a sentence of transportation short of life, he should pass a sentence of imprisonment for the term fixed by law, and then, under s. 59, change it to transportation for that period.—Queen v. Rughoo and others, W. R. Sp. 30. [Loch and Jackson, JJ. May 3, 1864.]

\* This proviso has been added by Act XXVII. of 1870, s. 3.

UNDER s. 59 of the Penal Code, a Court can sentence to transportation only in a case in which the offence is punishable with imprisonment for seven years or upwards. It may, in passing sentence for the offence, commute the imprisonment to transportation, but it cannot commute the sentence after the sentence of imprisonment has been passed.—*Queen v. Prem Chund Ousawal and others*, W. R. Sp. 35. [Jackson and Glover, JJ. June 6, 1864.]

TO BRING s. 59 of the Penal Code into operation, the punishment awarded on one offence alone must be seven years' imprisonment, and cannot be made up by adding two sentences together, and then commuting the amalgamated period to transportation. The two offences of robbery and of voluntarily causing hurt, when combined, are punishable under s. 394 alone, and not under ss. 392 and 394.—*Queen v. Mootkeo Kora*, 2 W. R. 1. [Kemp and Glover, JJ. Jan. 2, 1865.]

TRANSPORTATION can only be substituted for imprisonment when the offender is sentenced to at least seven years' imprisonment in one case.—*Queen v. Tonooram Malee and others*, 3 W. R. 44. [Kemp and Seton-Karr, JJ. July 11, 1865.]

A SENTENCE of transportation under ss. 412 and 59 of the Penal Code cannot exceed ten years.—*Queen v. Moháundo Bhundry and others*, 5 W. R. 16. [Seton-Karr and Macpherson, JJ. Jan. 20, 1866.]

A SENTENCE of transportation cannot be less than seven years. To bring s. 59 of the Penal Code into operation, the punishment awarded in each offence alone must not be less than seven years' imprisonment. A general sentence of transportation for two or more offences, when only one of the punishments awarded is seven years' imprisonment, is illegal.—*Queen v. Shonaullah and another*, 5 W. R. 44. [Macpherson and Glover, JJ. Mar. 3, 1866.]

UNDER s. 59 of the Penal Code, no sentence of transportation for a shorter period than seven years can be passed on any charge. Therefore, where a prisoner was convicted on separate charges of giving false evidence in a judicial proceeding under s. 193, and of forgery under s. 467, and sentenced to seven years' transportation for the first offence, and a further period of transportation for three years for the second offence, the second sentence was quashed as illegal.—*Queen v. Gour Chunder Roy*, 8 W. R. 2. [Norman and Seton-Karr, JJ. June 3, 1867.]

AN officer exercising the powers described in s. 1, Act XV. of 1862, is competent, under the provisions of s. 59 of the Penal Code, to pass a sentence of transportation for seven years instead of awarding sentence of imprisonment.—*Boodhooa, Revision of Proceedings in the Case of*, 9 W. R. 6; B. L. R. Sup. Vol. 869; 5 Wyman's Rev., Civ., and Crim. Reporter 20. [Peacock, C.J., and Seton-Karr, Jackson, Macpherson, and Hobhouse, JJ. Jan. 14, 1868.]

A WAS convicted of an attempt to commit rape, and was sentenced by the Judge to rigorous imprisonment for seven years, which he commuted, under this section, to transportation for the same term. *Held* that, under ss. 376 and 511, Penal Code, a sentence to imprisonment for the offence committed could not be for a longer term than five years, and such sentence could not be commuted, under s. 59, to transportation for a longer term, although, if the sentence of transportation had been passed in the first instance, it might have been for 10 years.—*Queen v. Joseph Meriam*, 1 B. L. R. A. Cr. 5; 10 W. R. 10. [Loch and Glover, JJ. July 6, 1868.]

WHEN an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.—*Reg. v. Naiada*, 1 L. R., 1 All. 43. [Turner, Offg. C.J., and Pearson, Spankie, and Oldfield, JJ. Aug. 23, 1876.]

S. 59 of the Penal Code does not authorize the substitution of transportation for the imprisonment to which a Court can sentence an offender in default of payment of fine.—*Kunbussa v. Reg.*, 1 L. R., 5 Mad. 28. [Innes and Muttusámi Ayyar, JJ. Feb. 28, 1882.]

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

WHENEVER any youthful offender is sentenced to transportation or imprisonment, and is, in the judgment of the Court by which he is sentenced, (a) under the age of 16 years, and (b) a proper person to be an inmate of a reformatory school, the Court may direct that, instead of undergoing his sentence, he shall be sent to a reformatory school, and be there detained for a period which shall be not less than two years and not more than seven years, and which shall be in conformity with any rules made under s. 22, and for the time being in force. The powers so conferred on the Court shall be exercised only by (a) the High Court, (b) the Court of Session, (c) a Magistrate of the First Class, (d) a Magistrate of Police or Presidency Magistrate in the towns of Calcutta, Madras, and Bombay.—Reformatory Schools Act (V. of 1876), s. 7.

Whenever any youthful offender under the age of 16 years has been or shall be sentenced to imprisonment, the officer in charge of the jail in which such offender is confined may bring him before the Magistrate within whose jurisdiction such jail is situate; and the Magistrate, if he thinks the offender (a) under the age of 16 years and (b) a proper person to be an inmate of a reformatory school, may direct him to be sent to a reformatory school, and to be there detained for a period which shall be not less than two and not more than seven years, and which shall be in conformity with any rules made under s. 22, and for the time being in force. In this section "Magistrate" means, in the towns of Calcutta, Madras, and Bombay, a Magistrate of Police or Presidency Magistrate, and elsewhere a Magistrate of the First Class.—Reformatory Schools Act (V. of 1876), s. 8.

Every youthful offender so directed by a Court or Magistrate to be sent to a reformatory school shall be sent to such reformatory school as the Local Government may from time to time appoint for the reception of youthful offenders so dealt with by such Court or Magistrate.—Reformatory Schools Act (V. of 1876), s. 9.

A SENTENCE of imprisonment ought to commence from the time that the sentence is passed, unless there is some lawful reason for ordering it to commence at some future period. Except as in the cases provided for by ss. 46, 47, and 48 of the Criminal Procedure Code (Act XXV. of 1861), a Magistrate cannot authorize a sentence passed by him to take place from some future date, nor (except as provided for by s. 421 of the Code of Criminal Procedure) can a sentence, which is to take place immediately, be suspended.—In the Matter of Krishnanand Bhuttacharjee, 3 B. L. R. A. Cr. 50; S. C. 12 W. R. 47 (where the name is given as Kishen Soonder Bhuttacharjee).

61. In every case in which a person is convicted of an offence for which Sentence of forfeiture of he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property, except for the benefit of Government, until he shall have undergone the punishment awarded, or the punishment to which it shall have been commuted, or until he shall have been pardoned.

#### *Illustration.*

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and whenever any person shall be convicted of any offence for which he shall be transported, or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment shall be forfeited to Government, subject to such provision for his family and dependents as the Government may think fit to allow during such period.

S. 62 of the Penal Code, which provides for forfeitures, limits them to cases when the parties shall have been transported, or sentenced to imprisonment for at least seven years.—Queen v. Kripamoyee Chassanee and another, 8 W. R. 35. [Kemp and Glover, JJ. July 8, 1867.]

WHERE a zamindár was convicted of wrongfully keeping in confinement a kidnapped person, and was sentenced to transportation by the Sessions Judge, who added a sentence of forfeiture of the rents and profits of the prisoner's estates under s. 62 of the Penal Code, the High Court set aside the sentence under s. 62 as too severe. That sentence should be inflicted for offences of the most atrocious kind, or for offences committed under the most aggravated circumstances.—Queen v. Mahomed Akhîr alias Totah Meeah, 12 W. R. 17. [Jackson and Markby, JJ. June 29, 1869.]

**63.** Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

A JOINT-MAGISTRATE was held not competent to direct, under s. 44 of the Code of Criminal Procedure (Act XXV. of 1861), that a portion of a fine inflicted under s. 434 of the Penal Code be paid to an amín for the purpose of paying the expense of his deputation to restore the land-marks which had been destroyed by the opposite party.—Queen v. Moorut Loll and others, 6 W. R. 93. [Kemp and Markby, JJ. Dec. 21, 1866.]

THE following important remarks were made by the High Court (Jackson, J.) in a case in which the accused moved the Court on the ground that the fine (Rs. 500) imposed on him by a Magistrate was excessive: "It is not shown in any way what the income of the petitioner was, or why the fine is excessive. An application on such a ground should be supported by proof of what the income of the petitioner was, and that the fine was altogether disproportioned to that income, and oppressive. The description of fine which it was the object of this section to prohibit was a fine which it would be impossible or very difficult for the accused person to pay, or wholly disproportioned to the character of the offence. And to this it may be added that it is doubtful whether the section cited has any application to fines inflicted by a Magistrate. By its terms it applies to cases where the amount of fine is unlimited by law. Now, the power of the Magistrate to fine is, in all cases under the Penal and Criminal Procedure Codes, limited to Rs. 1,000; and it is only the Court of Session or the High Court that can inflict fines to an unlimited amount."—Queen v. Abdur Ruhman, 7 W. R. 37. [Jackson, J. Mar. 1, 1867.]

WHENEVER, under any law in force for the time being, a Criminal Court imposes a fine, or confirms, in appeal, revision, or otherwise, a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied (a) in defraying expenses properly incurred in the prosecution; (b) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit. If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.—Crim. Pro. Code (Act X. of 1882), s. 545.

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under s. 545.—Crim. Pro. Code (Act X. of 1882), s. 546.

**64.** "In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, in default of payment of fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or\* with fine only, in which the offender is sentenced to a fine,"† it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.

\* The words italicized have been inserted by Act X. of 1886, s. 21.

† The clauses quoted have been substituted by Act VIII. of 1882, s. 2, for the words, "In every case in which an offender is sentenced to a fine."



PRISONERS were sentenced to fines under ss. 21 and 22 of Mad. Act III. of 1864, and in default of payment of fine to rigorous imprisonment. *Held* that as fine in these cases was the only assignable punishment, and by ss. 30, 31, and 32, a specified procedure is laid down for the levy of the penalty, s. 64 of the Penal Code had no application.—*Pro.*, Nov. 20, 1871, 6 Mad. H. C. R. Ap. 40.

**65.** The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.

**HELD** by the majority of the Court that an offender, who has undergone the full term of imprisonment to which he was sentenced in default of the payment of a fine, is still liable to have the amount levied by distress and sale of any moveable property belonging to him, which may be found within the jurisdiction of the Magistrate of the District, whether the officer who inflicted the fine issued any special directions on the subject or not, *Seton-Karr, J.*, dissenting.—*Queen v. Modoooodun Day and others*, 3 W. R. 61. [*Kemp and Seton-Karr, JJ.* Aug. 15, 1863.]

A SUBORDINATE Magistrate of the First Class has no power under s. 45 of the Code of Criminal Procedure to award any greater sentence of imprisonment in default of a payment of fine than six weeks in the case of persons convicted of being members of an unlawful assembly.—*Phoolman Tewary v. Satram Ojha and others*, 6 W. R. 51. [*Norman and Seton-Karr, JJ.* July 30, 1866.]

IN every case in which an offender is sentenced to fine, the Court which sentences the offender may issue a warrant for the levy of the amount by distress and sale. The successor in office of a Judge or Magistrate may levy a fine imposed by his predecessor. But the Court which levies the fine must be the same as the Court which imposed it.—*Chunder Coomar Mitter v. Modhoosoodun Dey*, 9 W. R. 50. [*Peacock, C.J.*, and *Jackson, Phear, Macpherson, and Mitter, JJ.* Mar. 20, 1868.]

IMPRISONMENT in default of payment of a fine inflicted under Bom. Act VII. of 1867, s. 31, ought to be simple, not rigorous.—*Reg. v. Bechar Khushál*, 5 Bom. H. C. R. 43. [*Newton, Offg. C.J.*, and *Tucker, J.* June 11, 1868.]

THE sentence of imprisonment passed in default of the payment of a fine inflicted under s. 200 of the Penal Code (for committing a public nuisance) should be one of simple, not rigorous, imprisonment.—*Reg. v. Santu bin Lakháppá Kore*, 5 Bom. H. C. R. 45-46. [*Couch, C.J.*, and *Newton, J.* June 17, 1868.]

WHERE a Magistrate sentenced a person, who had neglected to take out a license, under Act XXI. of 1867, s. 15, and Act XXIX. of 1867, s. 3, to pay a fine of ten rupees, and in default of payment to suffer seven days' simple imprisonment, the High Court reversed so much of the sentence as awarded imprisonment, as the trying Magistrate had, under the Act, no power to make such an order.—*Reg. v. Chenáppá valad Nágáppá*, 5 Bom. H. C. R. 44. [*Newton and Tucker, JJ.* June 17, 1868.]

S 45 of the Criminal Procedure Code makes applicable the provisions of s. 65 of the Penal Code, not only to offences falling under that Code as defined in its 40th section, but to every case in which a Magistrate has jurisdiction under s. 21 of the Criminal Procedure Code. Imprisonment for one month awarded in default of payment of a fine under s. 3 of the Salt Revenue Act (XXXI. of 1850) was accordingly reduced to three weeks' simple imprisonment.—*Reg. v. Vithobá bin Somá*, 5 Bom. H. C. R. 61. [*Newton and Tucker, JJ.* July 30, 1868.]

A SUBORDINATE Magistrate of the First Class has power to deal with the case of an offence provided for by a special law—in this case Act III. of 1863 (B.C.)—when the punishment awardable is six months' imprisonment and fine only; s. 67 (and not s. 65) of the Penal Code being applicable to such a case.—*Chunder Pershad Singh*, Reference in the Matter of, 10 W. R. 30. [*Loch and Glover, JJ.* Aug. 24, 1868.]

THE Income-tax Act (IX. of 1869, supplemented by Act XXIII. of 1869) having been passed subsequently to the General Clauses Act (I. of 1868), s. 5 of the latter authorizes the award of imprisonment in default of payment of the fine imposed under s. 25 of the former.—*Reg. v. Sangáppá bin Bashiáppá*, 7 Bom. H. C. R. 76. [*Gibbs and Melvill, JJ.* Dec. 1, 1870.]

IN a case of assault, a sentence inflicting a fine of Rs. 50, and awarding imprisonment for one month in default of payment of the fine, is illegal, with reference to ss. 65, 352 of the Penal Code.—*Jehan Buksh and another, Petitioners*, 16 W. R. 42. [Kemp and Ainslie, JJ. Sep. 2, 1871.]

S. 309 of the Criminal Procedure Code does not extend the period of imprisonment which may be awarded by a Magistrate under s. 65 of the Penal Code: it only regulates the proceedings of Magistrates, which are limited.—*Empress v. Darba*, 1 L. R., 1 All. 461. [Stuart, C.J., and Pearson, Turner, and Spankie, JJ. Aug. 3, 1877.]

PRISONERS were convicted by a Cantonment Magistrate of an offence (affray) punishable under s. 160 of the Penal Code, and were sentenced to pay a fine of Rs. 25 each, or in default to be rigorously imprisoned for 30 days. An offence under s. 160 being punishable with imprisonment for one month, or with fine to the extent of Rs. 100, or with both, the Sessions Judge, while referring the proceedings of the Cantonment Magistrate to the High Court, submitted that the Magistrate was not authorized in awarding imprisonment, in default of payment of fine, for a period exceeding one-fourth of one month. "The High Court, after giving careful consideration to the provisions of s. 309 of the Code of Criminal Procedure (Act X. of 1872), are of opinion that the sentence of the Cantonment Magistrate is not illegal. The final clause of s. 309 enacts that, where a person is sentenced to fine only, the Magistrate may award such term of imprisonment in default of payment of fine as is allowed by law, provided the amount does not exceed the Magistrate's powers under the Act. It appears to the High Court that the proper construction of this clause is as follows: If imprisonment and fine, and further imprisonment in default of payment of fine, is the sentence, the imprisonment in default cannot exceed one-fourth of the period of imprisonment which the Magistrate is competent to inflict for the offence; but if the sentence is fine only, the imprisonment in default of payment may be the whole period of imprisonment which the Magistrate is competent to inflict for the offence."—*Reg. v. Muhammad Saib*, 1 Mad. H. C. R. 277. [Junes, Offg. C.J., and Kindersley, Busted, and Tarrant, JJ. Sep. 4, 1877.] But see the following ruling:

S. 33 of the Code of Criminal Procedure, 1882, does not authorize a Magistrate to pass a sentence in default of payment of fine in excess of the term prescribed by s. 65 of the Penal Code. *Reg. v. Muhammad Saib*, 1 L. R., 1 Mad. 277, was overruled in 1881.—*Queen-Empress v. Venkatesagadu*, 1 L. R., 10 Mad. 165. [Collins, C.J., and Kernan, Muttusami Ayyar, Brandt, and Parker, JJ. Jan. 18, 1887.]

## 66 The imprisonment which the Court imposes in default of payment

Description of imprisonment for such default. of a fine may be of any description to which the offender might have been sentenced for the offence.

## 67. If the offence be punishable with fine only, "the imprisonment

Imprisonment for non-payment of fine, when offence punishable with fine only. which the Court imposes in default of payment of the fine shall be simple, and "the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

WHERE an offence is punishable with both fine and imprisonment, or with fine only, and the Magistrate fines only, but awards imprisonment in default of payment, the term of imprisonment is regulated by s. 67, and not s. 65.—*Chunder Pershad Singh*, Reference in the Matter of, 10 W. R. 30. [Loch and Glover, JJ. Aug. 24, 1868.]

IN cases of simple imprisonment ordered as a process for enforcement of payment of fine, the rule of s. 262 of the Criminal Procedure Code limiting the period of imprisonment in summary trials does not apply, as that section only refers to substantive sentences of imprisonment.—*Empress v. Asghar Ali*, 1 L. R., 6 All. 61. [Tyrrell, J. Aug. 13, 1883.]

\* The words quoted have been inserted by Act VIII. of 1882, s. 3.

**68.** The imprisonment which is imposed in default of payment of a

Imprisonment to terminate  
on payment of fine.

fine shall terminate whenever that fine is either  
paid or levied by process of law.

**69.** If, before the expiration of the term of imprisonment fixed in de-

Termination of such im-  
prisonment upon payment of  
proportional part of fine.

fault of payment, such a proportion of the fine be  
paid or levied that the term of imprisonment suf-  
fered in default of payment is not less than pro-  
portional to the part of the fine still unpaid, the imprisonment shall termi-  
nate.

#### *Illustration.*

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment. Here, if seventy-five rupees of the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

A PRISONER was sentenced to imprisonment and fine, and in default of payment of the latter to a further term of imprisonment. He paid a portion of the fine, but that fact not having been communicated to the jailor, underwent the entire further term of imprisonment. *Held* that, under these circumstances, the Court had no power to order the fine to be refunded.—*Reg. v. Náthá Mulá*, 4 Bom. H. C. R. 37. [Couch, C.J., and Newton, J. Oct. 9, 1867.]

**70.** The fine, or any part thereof which remains unpaid, may be levied

Fine leviable within 6 years,  
or during imprisonment.

at any time within six years after the passing of  
the sentence, and if, under the sentence, the offen-  
der be liable to imprisonment for a longer period than six years, then at any  
time previous to the expiration of that period; and the death of the offender

Death not to discharge  
property from liability.

does not discharge from the liability any property  
which would, after his death, be legally liable for  
his debts.

IN every case in which an offender is sentenced to fine, the Court which sentences the offender may issue a warrant for the levy of the amount by distress and sale. The successor in office of a Judge or Magistrate may levy a fine imposed by his predecessor. But the Court which levies the fine must be the same as the Court which imposed it.—*Chunder Coomar Mitter v. Modhoosoodun Dey*, 9 W. R. 50. [Peacock, C.J., and Jackson, Phear, Macpherson, and Mitter, JJ. Mar. 20, 1868.]

ON a reference as to whether the restriction for the recovery of fines to moveable property (Criminal Procedure Code, s. 61) applied only during the lifetime of the offender, and whether the fine could, after his death, be recovered, under s. 70 of the Penal Code, from his immoveable property, the Court was of opinion that the law had only provided for the distress and sale of moveable property, and that there was no way in which immoveable property could be made liable.—*Reg. v. Lallu Kárwár*, 5 Bom. H. C. R. 63. [Newton and Tucker, JJ. July 30, 1868.]

WHERE a person has undergone imprisonment in default of payment of fine, he is not thereby exonerated from paying the fine (5 R. J. P. J. 37). This ruling is in accordance with the principle laid down by the Law Commissioners, who say: "We do not mean that this imprisonment shall be taken in full satisfaction of the fine; we cannot consent to permit the offender to choose whether he will suffer in his person or his property. . . . The imprisonment which an offender has undergone shall not release him from the pecuniary obligation under which he lies. His person will, indeed, cease to be answerable for the fine; but his property will, for a time, continue to be so."

71. Where anything which is an offence is made up of parts, any of

Limit of punishment of offence made up of several offences. which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided.

"Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

"where several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence,

"the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."\*

#### Illustrations.

(a.) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(b.) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

S. 71 of the Penal Code applies to the case of a person charged with "house-breaking" under s. 457, and "theft" committed on the same occasion, under s. 380 of the Penal Code. A Magistrate has power to inflict only two years' imprisonment for a single offence.—Reg. v. Arjun, 1 Bom. H. C. R. 87. [Forbes and Westropp, JJ. Nov. 4, 1863.]

THERE cannot be a conviction both of "rioting" and of "being members of an unlawful assembly." The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. Were both original sentences legal, the appeal would be to the Sessions Judge.—Meelan Khalifa v. Dwarka Nath Goopto and others, 1 W. R. 7. [Kemp and Glover, JJ. Aug. 17, 1864.]

A PERSON convicted of robbery or theft cannot be also convicted of dishonestly receiving in respect of the same property.—Queen v. Sheikh Muddun Ally and another, 1 W. R. 27. [Kemp and Glover, JJ. Nov. 23, 1864.]

THE two offences of robbery and of voluntarily causing hurt, when combined, are punishable under s. 394 alone, and not under ss. 392 and 394.—Queen v. Mootkeo Kora, 2 W. R. 1. [Kemp and Glover, JJ. Jan. 2, 1865.]

THE prisoner entered a house for the purpose of committing an assault, and, in carrying out that intention, caused grievous hurt. In convicting and punishing him for the substantive offence (grievous hurt), held that it was not necessary to pass a separate offence for the offence of house-trespass.—Queen v. Bassoo Rannah, 2 W. R. 29. [Kemp and Glover, JJ. Jan. 30, 1865.]

S. 3, Act VI. of 1864, does not allow of whipping in addition to imprisonment in the case of a fresh conviction. House-breaking by night and theft form a single and entire offence, and cannot be punished separately.—Queen v. Tonnokosh, 2 W. R. 63. [Jackson and Glover, JJ. April 19, 1865.]

THE theft and the taking or retention of stolen goods form one and the same offence, and cannot be punished separately.—Queen v. Sreemunt Adup, 2 W. R. 63. [Glover, J. April 19, 1865.]

\* The clause quoted has been added by Act VIII. of 1892, s. 4.

HOUSE-TRESPASS and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.—*Queen v. Surroop Nupit and others*, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 15, 1865.]

CONVICTION and sentence both for rioting and for grievous hurt upheld, the punishment being on the whole not more severe than might properly have been awarded if the conviction had been for grievous hurt only. A person convicted of rioting should not be convicted of hurt or grievous hurt caused to himself.—*Queen v. Azgur and others*, 5 W. R. 19. [Seton-Karr and Macpherson, JJ. Jan. 26, 1866.]

A PERSON convicted of house-breaking, followed immediately by theft, is punishable only under s. 457 of the Penal Code.—*Queen v. Chytun Bowra and others*, 5 W. R. 49. [Jackson and Glover, JJ. Mar. 5, 1866.]

A DOUBLE sentence for theft and mischief is illegal and improper.—*Bechuk Aheer v. Auluck Bhooniah and others*, 6 W. R. 5. [Jackson and Campbell, JJ. June 18, 1866.]

HELD that it was not illegal to convict prisoners of mischief, as well as of theft; the offences charged being that they had cut down Government trees without leave, and appropriated them.—*Reg. v. Náráyan Krishma et al.*, 2 Bom. H. C. R. 392. [Couch, C.J., and Newton, J. June 27, 1866.]

THE prisoner was convicted by the Magistrate of two separate offences under ss. 456 and 380 of the Penal Code, and sentenced for both. On appeal, the Sessions Judge, holding that the offence proved was under s. 457, ordered a new trial for offences under ss. 457 and 380. Held that there ought not to be a new trial, but that the conviction and sentence under s. 380 should be set aside.—*Queen v. Ramcharan Kaire*, B. L. R. Sup. Vol. 88; 6 W. R. 39. [Peacock, C.J., and Norman, Kemp, Seton-Karr, and Campbell, JJ. July 9, 1866.]

IN a case of separate convictions and sentences for house-breaking by night and theft under ss. 457 and 479 of the Penal Code, the conviction and sentence under s. 379 were quashed, and those under s. 457 were upheld.—*Jogeen Pullee v. Nobo Pullee*, 6 W. R. 49. [Kemp and Markby, JJ. July 28, 1866.]

THE conviction of prisoners for two offences, when the one offence formed an integral portion of the other, held to be in effect punishing twice for the same offence, and therefore illegal.—*Government v. Lalawun Singh and others*, 1 Agra H. C. R. 31. [Turner, J., and Spaukie, Offg. J. Nov. 22, 1866.] Followed in *Queen v. Mungroo*, 6 N. W. P. 294.

THEFT is the sequel of, and cannot be separated from, house-breaking. A cumulative sentence of three years' imprisonment was held to be illegal in such a case.—*Mussahur Daoudh*, 6 W. R. 92. [Kemp and Markby, JJ. Dec. 19, 1866.]

SENTENCES of imprisonment may be accumulated beyond the period of 14 years, notwithstanding s. 46 of the Code of Criminal Procedure (Act XXV. of 1861), which limit has reference only to sentences passed simultaneously, or passed upon charges tried simultaneously.—*Queen v. Puban*, 7 W. R. 1. [Kemp and Markby, JJ. Jan. 3, 1867.]

THE prisoner was convicted and sentenced separately for culpable homicide not amounting to murder, and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter being only part of the evidence of the former), the conviction and sentence for the second offence were quashed.—*Queen v. Rubbeoolah*, 7 W. R. 13. [Norman and Seton-Karr, JJ. Jan. 16, 1867.]

WHERE a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner, and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under s. 363 of the Penal Code only, and of the latter under s. 368 only, while the separate conviction of both under s. 366 was quashed.—*Queen v. Isree Panday and others*, 7 W. R. 56. [Norman, J. April 8, 1867.]

WHERE a man brought a false charge against another, and at the trial gave false evidence in support of the charge, it was held that he was liable to be tried and punished separately on separate charges of bringing a false charge and of giving false evidence.—*Queen v. Abdool Azeez*, 7 W. R. 59. [Kemp and Glover, JJ. April 27, 1867.]

THE offences of rioting armed with deadly weapons, and stabbing a person on whose premises the riot takes place, are distinct offences, and punishable as separate offences under ss. 148, 149, and 324 of the Penal Code, s. 149 being read as a proviso to s. 148.—*Queen v. Callachand and others* 7 W. R. 60. [Norman and Seton-Karr, JJ. April 29, 1867.]

THE evidence of a kidnapped girl, if thoroughly credible, is legally sufficient for a conviction for kidnapping. There is nothing illegal in passing separate sentences for kidnapping, and for selling for purposes of prostitution.—Queen v. Doorga Dass and others, 7 W. R. 63. [Kemp, J. May 18, 1867.]

SEPARATE convictions and sentences under ss. 429 and 379, and under ss. 457 and 380 of the Penal Code, were set aside; and the convictions under s. 429 in the former case, and under s. 457 in the latter, allowed to stand.—Queen v. Sahrae and others, 8 W. R. 31. [Jackson and Hobhouse, JJ. July 1, 1867.]

THE offence described in s. 363 of the Penal Code is included in that described in s. 369, the kidnapping, and the intention of dishonestly taking property from the kidnapped child, being included in the latter section.—Queen v. Shama Sheikh, 8 W. R. 35. [Kemp and Glover, JJ. July 8, 1867.]

CRIMINAL trespass is a part of the offence of mischief committed upon land as well as of house-breaking by night.—Queen v. Laloo Sing and others, 8 W. R. 54. [Jackson and Hobhouse, JJ. July 29, 1867.]

WHERE a person, though charged under two heads, was found guilty of what was substantially but one offence, *held* that it was improper for the Sessions Judge to record a conviction under two sections of the Penal Code, and thereupon to award a punishment of two years' imprisonment in excess of what the law prescribed for the offence committed.—Reg. v. Yora Karubeg, 4 Bom. H. C. R. 12. [Couch, C.J., and Newton, J. Sep. 26, 1867.]

Held by the majority that when a person who has not been "previously convicted" (*vide* s. 4, Act VI. of 1864) is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of those offences, in addition to imprisonment or fine for the other or others; but it is not illegal to sentence him to one whipping in lieu of all other punishments. *Held* further that when a person who has been "previously convicted" at one time of two or more offences, he may be punished with one, but only one whipping, in addition to any other punishment to which, under s. 46 of the Code of Criminal Procedure, he may be liable.—Nassir v. Chundor and others, 9 W. R. 41; B. L. R. Sup. Vol. 951. [Peacock, C.J., Seton-Karr, Jackson, Phear, and Macpherson, JJ. Mar. 12, 1868.]

WHERE prisoners are charged both with rioting, being armed with deadly weapons, and with causing hurt by shooting, and their conviction of the latter offence rests solely on the fact of their belonging to a party by one of whom (not one of the prisoners) fire-arms were used, it is wrong to pass a cumulative sentence, and to punish the prisoner both for the rioting and for the causing hurt. The punishment should be for either one or other of those offences. A charge should be so framed as to refer to the section of the Penal Code under which the offence charged is punishable, as required by ss. 234 and 237 of the Code of Criminal Procedure. Where there is a riot and fighting between two factions, the members of each party should be committed for trial separately, and not all together.—Queen v. Durzoolla and others, 9 W. R. 33. [Seton-Karr and Macpherson, JJ. Mar. 14, 1868.] But see Queen v. Callachand, 7 W. R. 60, *supra*.

THE offences specified in ss. 411 and 414 of the Penal Code cannot be considered as two distinct offences so as to allow of the procedure of s. 46 of the Criminal Procedure Code being adopted.—4 Mad H. C. R. Ap. 14. [Aug. 12, 1868.]

WHEN a prisoner, convicted of "house-breaking in order to commit theft," and of "theft," both offences being portions of one continuous criminal act, was sentenced, on the first head of charge, to one year's rigorous imprisonment, under s. 457 of the Penal Code, and on the second head of charge to receive twenty stripes, under s. 2 of the Whipping Act (VI. of 1864), the separate sentences (though not illegal) were disapproved of, as contrary to the spirit and intention of the Whipping Act.—Reg. v. Genu bin Aku, 5 Bom. H. C. R. 85. [Couch, C.J., and Newton, J. Sep. 16, 1868.]

WHERE the prisoners were charged under s. 143 of the Penal Code of rioting armed with deadly weapons, and also under s. 324 of voluntarily causing hurt by dangerous weapons, they should have been sentenced only under one or other of these sections, the charges being properly speaking only alternative charges. The High Court refused to interfere with the reception by the Sessions Judge of the uncorroborated evidence of accomplices.—Queen v. Dina Sheikh and others, 10 W. R. 63; 3 B. L. R. 15n. [Phear and Hobhouse, JJ. Dec. 15, 1868.]

A DEPUTY Magistrate has no power to convict of theft (s. 380, Penal Code), where the offence charged is lurking house-trespass by night with aggravating circumstances (ss. 458, 459, Penal Code), but must commit on the latter charge.—*Puran Telce v. Bhuttoo Dome*, 9 W. R. 5. [Kemp and Jackson, JJ. Jun. 13, 1869.]

WHERE prisoners are convicted of separate offences, a separate sentence should be passed in each case, with a direction that imprisonment in the second case should commence on the expiration of that in the first, and so on, otherwise it would be impossible, in case of an appeal and a reversal of the conviction in one or more of the separate cases, to determine to what portion of the aggregate imprisonment the prisoners still remained liable.—*Pro.*, Jan. 15, 1869, 4 Mad. II. C. R. Ap. 27.

WHERE, in a case in which a prisoner was convicted of theft and also of receiving stolen property, the sentence passed was really one for theft, the High Court nevertheless refused to allow the conviction for receiving stolen property to remain on the record against the accused, and reversed it.—*Queen v. Seeb Chunder Haree and others*, 11 W. R. 120. [Jackson and Hobhouse, JJ. Mar. 1, 1869.]

WHERE substantially only one offence has been committed, the several acts which, taken together, constitute that offence, cannot legally be treated as separate offences, and the prisoner cannot legally be sentenced in respect of these as well as in respect of the principal offence.—*Queen v. Chunder Kant Lahoree and others*, 12 W. R. 2; S. C. 3 B. L. R. A. Cr. 14 (where the name of the case is given as "*Queen v. Kalisankar Sandyal and others*." [Macpherson and Jackson, JJ. June 11, 1869.] But see s. 235 (ill. c) of the Criminal Procedure Code (Act X. of 1882) *infra*, p. 31.

HELD on the facts of this case that a party A, who objected to accompany a constable who had been directed to produce him before the Court, and also seized the constable by the arm, and resisted his carrying away a pony which A was charged with having misappropriated, was guilty of separate offences under ss. 353 and 183 of the Penal Code, and the infliction of separate sentences for each offence was not prevented by s. 71 of that Code.—*Queen v. Joyah Mohun Chunder*, 14 W. R. 19. [Loch and Hobhouse, JJ. July 16, 1870.]

A PRISONER cannot be convicted under s. 411 of the Penal Code for dishonestly receiving or retaining stolen property in respect of property which he himself has been convicted, under s. 409, Penal Code, of having obtained possession by committing criminal breach of trust.—*Queen v. Shunkur*, 2 N. W. P. 312. [Spankie, J. Aug. 5, 1870.]

THE making of any number of false statements in the same deposition is one aggregate case of giving false evidence. Charges of false evidence cannot be multiplied according to the number of false statements contained in the depositions.—*Pro.*, May 1, 1871; 6 Mad. H. C. R. Ap. 27.

HELD (Kemp and Phear, JJ., dissenting) that, notwithstanding s. 46 of the Code of Criminal Procedure (Act XXV. of 1861), a person convicted at the same time of two or more offences punishable under the Penal Code may, in addition to the punishments prescribed by the Penal Code, be sentenced to whipping under Act VI. of 1864. The Penal Code and the Code of Criminal Procedure must be read as if the Whipping Act formed a part of the Penal Code from the date of its enactment, and s. 46 of the Code of Criminal Procedure is applicable to all offences and punishments as prescribed by the Penal Code in its present and amended form.—*Moniruddeen Shamadar*, 15 W. R. 89; 7 B. L. R. 165. [Norman, Offg. C.J., and Loch, Bayley, Kemp, Phear, Macpherson, and Mitter, JJ. May 30, 1871.]

PERSONS found guilty of rioting may, if the circumstances warrant it, be convicted of the several offences of rioting armed with deadly weapons, culpable homicide, and grievous hurt.—*Queen v. Hurgobind and others*, 3 N. W. P. 174. [Turner, J. July 7, 1871.]

IT is competent to a Magistrate to pass a separate sentence in respect of each of the two charges, of house-breaking in order to commit theft, and of theft in a human dwelling, of which a prisoner is found guilty, provided the aggregate punishment awarded on the two charges does not exceed the punishment which the case warrants for the greater of the two offences of which the accused has been convicted, and provided, further, such aggregate punishment does not exceed the jurisdiction of the Court passing the sentences.—*Reg. v. Anvarkhan valad Gulkhan*, 9 Bom. H. C. R. 172. [Westropp, C.J., and Gibbs, Lloyd, and Kernell, JJ. May 23, 1872.]

A PRISONER, tried, convicted, and punished, under s. 369 of the Penal Code, of abducting a child with intent dishonestly to take moveable property, cannot also be punished for the theft of a part of the moveable property which he intended dishonestly to take

through means of the abduction; and the second punishment for theft is, by the present Code of Criminal Procedure, illegal.—*Noujan, Appellant*, 7 Mad. H. C. R. 375. [*Morgan, C.J.*, and *Holloway, J.* July 8, 1873.]

CONVICTIONS under s. 471 of the Penal Code and s. 474 cannot stand together.—*Queen v. Nuzur Ali*, 6 N. W. P. 39. [*Turner, J.* Dec. 6, 1873.]

WHERE an act of restraint or confinement in an attempt to kidnap has been exercised in furtherance of the attempt, and goes to form part of that offence, and is not done with an intention or object which can be separated from the general intention to kidnap, it will constitute an integral part of that offence, and should not form the subject of a separate conviction and sentence.—*Queen v. Mungroo*, 6 N. W. P. 293. [*Oldfield, J.* Aug. 13, 1874.]

FOR purposes of appeal the whole punishment awarded to one person on one trial for several instances of the same offence is to be regarded as one sentence. *Semble*, that where a person is tried at the same time for several instances of the same offence, it is not necessary that more than a single sentence should be passed. But if a separate sentence be passed on each head, *held* that an appeal brings the aggregate of those sentences, as together constituting the punishment awarded in a single trial, within the jurisdiction of the Appellate Court.—*Reg. v. Gulám Abás*, 12 Bom. H. C. R. 147. [*West and Pinhey, JJ.* April 15, 1875.]

IN a case of conviction of house-breaking by night in order to commit theft under s. 457, and theft under s. 380 of the Penal Code, there may be either one sentence for both offences, or separate sentences for each offence, provided that the total punishment awarded does not exceed that which may be given for the graver offence.—*Reg. v. Tukayá bin Tamana*, 1 L. R., 1 Bom. 214. [*Westropp, C.J.*, and *Kemball, West*, and *Nauabháí Haridás, JJ.* Sep. 14, 1875.]

A DOUBLE sentence for theft and mischief is illegal and improper.—*Bichuk Ameer v. Auhuck Bhooonea* and others, 6 W. R. 5. [*Jackson and Campbell, JJ.* June 18, 1876.]

WHERE the petitioner was convicted of having assisted in concealing stolen railway pins in a certain person's house and field, with a view to having such innocent person punished as an offender, *held* that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193 of the Penal Code, and of voluntarily assisting in concealing stolen property under s. 414, Penal Code.—*Empress v. Rameshar Rai*, 1 L. R., 1 All. 379. [*Spankie, J.* April 23, 1877.]

No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration, and not to be believed. Therefore, a Magistrate, when he has before him a person charged with having been armed with a deadly weapon while a member of an unlawful assembly, is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon, and so to give himself jurisdiction to try the case summarily, and then, by inflicting a sentence of imprisonment not exceeding three months, to deprive the prisoner of his right of appeal.—*Empress v. Abdool Karim*; and *Empress v. Golam Mahomed*, 1 L. R., 4 Cal. 18; 3 C. L. R. 81. [*Ainslie and Broughton, JJ.* July 6, 1878.]

WHERE a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief, *held* that such person could not, under cl. iii of s. 454 of Act X. of 1872, receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not in such a case prohibit the Court from passing sentence in respect of each offence established.—*Empress v. Budh Sing*, 1 L. R., 2 All. 101. [*Turner, J.* Jan. 24, 1879.]

RIOTING and causing hurt in the course of such rioting are distinct offences, and each offence is separately punishable.—*Empress v. Ram Adhin*, 1 L. R., 2 All. 139. [*Pearson, J.* Feb. 5, 1879.]

WHERE a mother abandoned her child, with the intention of wholly abandoning it and knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment, *held* that she could not be convicted and punished under s. 304 and also under s. 317 of the Penal Code, but s. 304 only.—*Empress v. Banni*, 1 L. R., 2 All. 349. [*Straight, J.* Aug. 4, 1879.]



WHERE, in the course of one and the same transaction, an accused person appears to have committed several acts, directed to one end and object, which together amount to a more serious offence than each of them taken individually by itself would constitute, although for purposes of trial it may be convenient to vary the form of charge, and to designate not only the principal, but the subsidiary crimes alleged to have been committed, yet in the interests of simplicity and convenience it is best to concentrate the conviction and sentence on the gravest offence proved. Where, therefore, a person who broke into a house by night, and committed theft therein, was charged and tried for offences under ss. 380 and 457 of the Penal Code, and was convicted of both those offences, and punished for each with rigorous imprisonment for eighteen months, the Court convicted him of the offence under s. 457, and sentenced him to rigorous imprisonment for three years, and acquitted him of the offence under s. 380.—*Empress v. Ajudhia*, I. L. R., 2 All. 644. [Straight, J. Jan. 19, 1880.]

WHERE a person who is accused of several offences of the same kind is tried for each of such offences separately by a Magistrate, the aggregate punishment which such Magistrate can inflict on him in respect of such offences is not limited to twice the amount which he is, by his ordinary jurisdiction, competent to inflict, but such Magistrate can inflict on him for each offence the punishment which he is, by his ordinary jurisdiction, competent to inflict. A person accused of theft on the 1st August, and of house-breaking by night in order to steal on the 2nd August, both offences involving a stealing from the same person, was charged and tried by a Magistrate of the first class at the same time for such offences, and sentenced to rigorous imprisonment for two years for each of such offences. *Held* that the joinder of the charges was regular under s. 453 of Act X. of 1872, and the punishment was within the limits prescribed by s. 314. *Empress v. Umeda* (unreported, decided 18th July 1879) observed on by Straight, J.—In the Matter of Daulatia, I. L. R., 3 All. 305. [Stuart, C.J., and Pearson, Spankie, Oldfield, and Straight, JJ. Mar. 19, 1880.]

UNDER s. 454 of the Criminal Procedure Code (Act X. of 1872), the collective punishment awarded under ss. 147, 148, and 324 of the Penal Code, must not exceed that which may be awarded for the graver offence. *Quære*.—Whether separate convictions under ss. 147 and 324 of the Penal Code are legal?—In the Matter of the Petition of Jubdur Kazi and Golam Khan: *Empress v. Jubdur Kazi and Golam Khan*, I. L. R., 6 Cal. 718; 8 C. L. R. 390. [Mitter and Maclean, JJ. Feb. 18, 1881.] *Contra*: *Empress v. Dungar Singh*, I. L. R., 7 All. 29, *infra*.

A MEMBER of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—*Empress v. Ram Partab*, I. L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.] Dissented from in *Queen-Empress v. Dungar Singh*, I. L. R., 7 All. 29, *infra*.

THE offences of rioting, of voluntarily causing hurt, and of voluntarily causing grievous hurt—each of the two latter offences being committed against a different person—are all distinct offences within the meaning of s. 35 of the Criminal Procedure Code (Act X. of 1882). Under the first paragraph of s. 235 of the Criminal Procedure Code, a person accused of rioting and of voluntarily causing grievous hurt may be charged with, and tried for, each offence at one trial, and, under s. 35, a separate sentence may be passed in respect of each. *Queen-Empress v. Ram Partab* (I. L. R., 6 All. 121) dissented from.—*Queen-Empress v. Dungar Singh*, I. L. R., 7 All. 29. [Brodhurst, J. July 22, 1884.]

ON the 8th August 1884, a Magistrate of the second class began an inquiry in a case in which several persons were accused of rioting and voluntarily causing grievous hurt. On the 6th September, the powers of a Magistrate of the first class were conferred on the Magistrate by an order of Government, which was communicated to him on the 8th September. On the 9th September, the case for the prosecution having closed, the Magistrate framed charges against each of the accused under ss. 323 and 325 of the Penal Code, recorded the statements of the accused and the evidence for the defence, and, on the 10th September, convicted the accused of all the charges, passing upon each of them, in respect of each charge, sentences which he could pass as a Magistrate of the first class, but could not have passed as a Magistrate of the second class. On appeal, the Sessions Judge, on the ground that the prisoners had committed the offence described in s. 148 of the Penal Code, *held* that the sentences passed by the Magistrate were illegal, as being inconsistent with the provisions of s. 71, paras. 2 and 4; and he accordingly reduced the sentences of imprisonment which the Magistrate had passed to the maximum of imprisonment (Petheram, C.J., and Brodhurst, J., dissenting) that the sentences passed by the Magistrate were legal. *Per* Oldfield, Mahmood, and Duthoit, JJ., that, with reference to the

terms of s. 39 of the Criminal Procedure Code, a Magistrate of the second class, who has begun a trial as such, and continued it in the same capacity up to the passing of sentences, and who, prior to passing sentence, has been invested with the powers of a Magistrate of the first class, is competent to pass sentence in the case as a Magistrate of the first class. *Per* Oldfield and Duthoit, J.J., that the provisions of s. 71 of the Penal Code had no application to the case, inasmuch as the offences of causing grievous hurt and hurt formed no part of the offence of rioting. *Per* Petheram, C.J., that a case must be taken to be tried upon the day the trial commences; that for all the purposes of the trial, the Magistrate in this case retained the *status* of a Magistrate of the second class; and that he was therefore not competent to pass sentence as a Magistrate of the first class. Also *per* Petheram, C.J., that the Judge, in this case, had no power to alter the charge, or to frame a new charge in any way. *Per* Brodhurst, J., that the sentences passed by the Magistrate were, as a whole, illegal; that if he had convicted the accused under s. 148 of the Penal Code, his order would, under the circumstances, have been legal; that a Court of appeal is not competent to alter the finding of a Magistrate, so as to convict an accused person of an offence which the Court of which the order is in appeal was not competent to try; and that a member of an unlawful assembly, some members of which have caused grievous hurt, can be legally punished for the offence of rioting as well as for the offence of causing grievous hurt. *Empress v. Dungar Singh* (I. L. R., 7 All. 29) referred to.—*Queen-Empress v. Pershad*, I. L. R., 7 All. 414. [*Petheram, C.J., and Oldfield, Brodhurst, Mahmood, and Duthoit, J.J.* Jan. 17, 1885.]

THE offences of rioting armed with a deadly weapon and voluntarily causing hurt with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting and of the hurt caused to each of the persons injured. A and B were charged with rioting armed with deadly weapons under s. 148 of the Penal Code, and they were also charged under s. 324, coupled with s. 149, with causing hurt by a dangerous weapon to X, and B was further charged under s. 324 with causing a like hurt to Y, A being also charged under s. 324, coupled with s. 149, in respect of the hurt caused by B to Y. A and B were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. The offences under s. 324 were committed during the riot. *Held* that the several acts with regard to which the prisoners were charged did not fall within the provisions of s. 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that consequently under s. 235 of the Criminal Procedure Code the several sentences passed were strictly legal.—*Loke Nath Sircar v. Queen-Empress*, I. L. R., 11 Cal. 349. [*Tottenham and Ghose, J.J.* Mar. 6, 1885.] Follows *Queen-Empress v. Dungar Singh*, I. L. R., 7 All. 29, *supra*.

WHERE the accused, who was a head-constable, was found guilty of making a false charge under s. 211, and of giving false evidence under s. 193 of the Penal Code, and the Sessions Judge passed sentences of three months' simple imprisonment for each offence, and, taking into consideration the accused's past conduct, directed that the sentences should run concurrently, *held* that the sentences were inadequate and illegal. Accordingly, the sentences were enhanced to three months' rigorous imprisonment for each offence; and as the two offences were distinct, the High Court directed, under s. 35 of the Criminal Procedure Code (Act X. of 1882), one sentence to commence after the expiration of the other. *Queen v. Abdool Azceez* (7 W. R. 59) followed.—*Queen-Empress v. Pir Mahomed*, I. L. R., 10 Bom. 254. [*Birdwood and Jardine, J.J.* Dec. 10, 1885.]

FOUR persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon, who went with a warrant for his arrest accompanied by other persons, A and B, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon and another by means of a dangerous weapon on A. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section, and two months' rigorous imprisonment under the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on A, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other. *Held* that the offence of rioting was completed by the assault on A, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure. *Held*, further, that even if A had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were

legal, inasmuch as the acts of the accused, taken separately, constituted offences under ss. 143 and 353 of the Penal Code, and, combined, an offence under s. 147; and under s. 235, sub-section 3 of the Code of Criminal Procedure, the accused might be charged with, and tried at one trial for, the offence under s. 147, and those under ss. 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code, as amended by s. 4 of Act VIII. of 1882, which limit had not been exceeded in the present case.—In the Matter of Chandra Kant Bhattacharjee; Chandra Kant Bhattacharjee v. Queen-Empress, I. L. R., 12 Cal. 495. [Mitter and Beverley, JJ. Dec. 11, 1885.]

THE accused was convicted at one trial by a Magistrate of the first class of the offences of house-breaking by night with intent to commit theft, punishable under s. 457, and of theft in a dwelling-house, punishable under s. 380 of the Penal Code (Act XLV. of 1860), the two offences being part of the same transaction, the theft following the house-breaking. The prisoner was sentenced to two years' rigorous imprisonment under s. 457, and to six months' rigorous imprisonment and a fine of Rs. 100, or, in default of payment, three months' further rigorous imprisonment, under s. 380. The District Magistrate referred the case to the High Court, on the ground that the aggregate of punishment awarded on the two heads of charge exceeded the powers of the First-class Magistrate who tried the case. The Sessions Judge, to whom an appeal had been preferred, was of the same opinion, and reduced the sentence to two years' rigorous imprisonment. Held that as the accused committed two distinct offences which did not "constitute, when combined, a different offence" punishable under any section of the Penal Code (Act XLV. of 1860), s. 71 of the Code did not apply, and as the aggregate punishment did not exceed twice the amount of punishment which the trying Magistrate was competent to inflict, the sentences were legal under s. 35 of the Criminal Procedure Code (Act X. of 1882). *Per Jardine, J.*—The rules for assessment of punishment, contained in s. 454 of the Criminal Procedure Code of 1872, having been omitted in s. 235 of the Criminal Procedure Code of 1882, must now be sought for in s. 71 of the Penal Code (Act XLV. of 1860) and in s. 35 of the Criminal Procedure Code (Act X. of 1882).—Queen-Empress v. Sakharam Bhaú, I. L. R., 10 Bom. 493. [Birdwood and Jardine, JJ. Feb. 1886.]

The following sections of the Criminal Procedure Code should be read with s. 71 of the Penal Code:—

35. When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

*Maximum term of punishment.*

Provided as follows:—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

(b) if the case is tried by a Magistrate (other than a Magistrate acting under s. 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

235. I.—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

III.—If several acts, of which one or more than one would, by itself or themselves, constitute an offence, constitute, when combined, a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, or for any offence constituted by any one, or more, of such acts.

Nothing contained in this section shall affect the Indian Penal Code, s. 71.

#### Illustrations.

to paragraph I.—

(a.) A rescues B, a person in lawful custody, and, in so doing, causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and tried for, ss. 225 and 333 of the Indian Penal Code.

(b.) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under ss. 454 and 497 of the Indian Penal Code.

(c.) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under ss. 498 and 497 of the Indian Penal Code.

(d.) A has in his possession several seals, knowing them to be counterfeit, and intending to use them for the purpose of committing several forgeries, punishable under s. 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under s. 473 of the Indian Penal Code.

(e.) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under s. 211 of the Indian Penal Code.

(f.) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under ss. 211 and 194 of the Indian Penal Code.

(g.) A, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring, in the discharge of his duty as such, to suppress the riot. A may be separately charged with, and convicted of, offences under ss. 147, 325, and 152 of the Indian Penal Code.

(h.) A threatens B, C, and D, at the same time, with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under s. 506 of the Indian Penal Code.

The separate charges referred to in illustrations a to h respectively may be tried at the same time.

to paragraph II.—

(i.) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under ss. 352 and 323 of the Indian Penal Code.

(j.) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under ss. 411 and 414 of the Indian Penal Code.

(k.) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under ss. 317 and 304 of the Indian Penal Code.

(l.) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under s. 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under ss. 471 (read with 466) and 196 of the same Code.

to paragraph III.—

(m.) A commits robbery on B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under ss. 323, 392, and 394 of the Indian Penal Code.

396. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine, or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and, if of imprisonment, penal servitude, or transportation, shall take effect according to the following rules, that is to say:—

If the new sentence is severer in its quality than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude, or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

*Explanation.*—For the purposes of this section—

(a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

397. When a person already undergoing a sentence of imprisonment, penal servitude, or transportation, is sentenced to imprisonment, penal servitude, or transportation, such imprisonment, penal servitude, or transportation, shall commence at the expiration of the imprisonment, penal servitude, or transportation to which he has been previously sentenced:

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

*Saving as to ss. 396 and 397.*

398. Nothing in s. 396 or s. 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

**72.** In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Punishment of person guilty of one of several offences, the judgment stating that it is doubtful of which.

WITH s. 72 of the Penal Code read the following section of the Criminal Procedure Code (Act X. of 1882):—

236. If a single act, or series of acts, is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

*Illustration.*

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust, or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust, and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

PROOF of contradictory statements on oath or solemn affirmation, without evidence as to which of them is false, is sufficient to justify a conviction, upon an alternative finding, of the offence of giving false evidence, under s. 72 of the Penal Code, and ss. 242, 381, and 382 of the Criminal Procedure Code. The English law upon the subject stated.—*Palany Chetty, In re*, 4 Mad. H. C. R. 51. But see rulings under s. 193. [Scotland, C.J., and Collett, J. May 18, 1868.]

**73.** Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say:

Solitary confinement.

A time not exceeding one month if the term of imprisonment shall not exceed six months:

A time not exceeding two months if the term of imprisonment shall exceed six months and "shall not exceed a"\* year :

A time not exceeding three months if the term of imprisonment shall exceed one year.

It is not illegal to impose solitary confinement as part of the sentence in a case tried summarily.—*Empress v. Annu Khan*, I. L. R., 6 All. 83. [Oldfield, J. Sep. 11, 1883.]

74. In executing a sentence of solitary confinement, such confinement shall, in no case, exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

SOLITARY confinement must not be imposed for the whole term of a person's imprisonment. Under s. 74 of the Penal Code it is to be imposed at intervals.—In the Matter of *Nyan Suk Mether*, 3 B. L. R. A. Cr. 49. [Jackson and Mitter, JJ. Aug. 10, 1869.]

WHERE a prisoner was sentenced to imprisonment for a year and a day, during three months of which he was to be kept in solitary confinement, the Madras High Court reduced the solitary confinement to 84 days.—Dec. 15, 1879; S. C. Weir, 1st Ed. Sup., 2nd Ed. 15.

75. Whoever, having been convicted of an offence punishable under Chapter XII. or Chapter XVII. of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life, "or to imprisonment of either description for a term which may extend to ten years."†

WHERE the subsequent offence is merely an attempt to commit an offence punishable under chap. 12 or 17, or an abetment of such an offence, the enhanced punishment cannot be awarded.—*Mad. II. C.*, 1864.

To justify enhanced punishment under s. 75 of the Penal Code on account of previous convictions, both convictions must be of offences punishable under ch. 12 and ch. 17 of the Code, and committed after the Code came into operation.—*Queen v. Moluck Chund Khalifa*, 3 W. R. 17. [Jackson and Glover, JJ. May 22, 1865.]

RECORDS of previous convictions should not be put in until the close of the trial, as they can only be used after conviction in determining the measure of punishment.—*Queen v. Shiboo Mundle*, 3 W. R. 38. [Glover, J. June 29, 1865.]

S. 75 of the Penal Code only applies to convictions of offences committed after the Code came into operation.—*Queen v. Hurpaul*, 4 W. R. 9. [Kemp, Campbell, and Glover, JJ. Sep. 12, 1865.]

IN order to legalize whipping in addition to imprisonment in the case of a second conviction, the offence must be the same in both cases.—*Queen v. Amarut Sheikh*, 4 W. R. 20. [Glover, J. Oct. 28, 1865.]

\* The words quoted have been substituted by Act VIII. of 1862, s. 5, for the words "less than a."

† The words quoted have been substituted by Act X. of 1866, s. 22, for the words "or to double the amount of punishment to which he would otherwise have been liable for the same; provided that he shall not in any case be liable to imprisonment for a term exceeding ten years."

WHERE a previous conviction takes place before the Penal Code came into operation, such conviction cannot be taken into account in awarding enhanced punishment under s. 75. The previous conviction must be after the Penal Code came into operation.—Reg. v. Pubon, 5 W. R. 66 (April 14, 1866). The following important remarks were made by Seton-Karr and Glover, JJ., in delivering judgment in the above case: "The meaning of the law appears to us to be that, when an offender, after having been punished with imprisonment for a crime under ch. 17, again, *after his release from prison*, commits a similar description of crime, or a crime punishable under the same chapter, he is liable, under s. 75, to enhanced punishment, on the ground that the sentence already borne has had no effect in preventing a repetition of his crime, and has been, therefore, insufficient as a warning. But where the prisoner's conviction has taken place a very short time before, and where no imprisonment under it has yet been undergone, and no time has been given for reformation, it cannot be said that a prisoner has had any opportunity of showing what the effect of the first sentence would have been upon him, and it would not be just to punish him as though he were an incorrigible offender, whom no comparatively light sentence could wean from evil courses."

RECORDS of previous convictions should not be put in until the prisoner has been convicted in the case then under trial.—Queen v. Jehan Mullick, 5 W. R. 67. [Glover, J. April 16, 1866.]

ON a reference by a Sessions Judge under s. 434 of the Criminal Procedure Code, a sentence of whipping in addition to one of rigorous imprisonment, in the case of an offence specified in s. 2 of Act VI. of 1864, was annulled, as the offence was not committed after previous conviction.—Reg. v. Sūryā bin Krishna Māndavkar, 3 Bom. II. C. R. 38. [Couch, C.J., and Newton and Warden, JJ. Dec. 12, 1866.]

To render a former acquittal or conviction a defence on second trial, the offence must, according to s. 55 of the Code of Criminal Procedure (Act XXV. of 1861), be the same offence. The prisoner was charged with having forged pattā A and B, bearing the same date, and adduced in evidence by him in the same suit. No mention of any charge as to pattā B was made in the order of commitment; and the prisoner having been acquitted on an indictment for forging pattā A, it was held by the majority of the Court (Markby J., dissenting) that the plea of *autre-fois acquit* was inadmissible on a subsequent trial of the prisoner for forging the pattā B.—Queen v. Dwarkanath Dutt, 7 W. R. 15; 2 Ind. Jur. N. S. 67. [Peacock, C.J., and Kemp and Markby, JJ. Jan. 23, 1867.]

ON a reference by a Sessions Judge, under s. 434 of the Criminal Procedure Code, a sentence of whipping in addition to one of rigorous imprisonment, in the case of an offence specified in s. 4 of Act VI. of 1864, was annulled, as the prisoner had not been previously convicted of the same offence.—Reg. v. Bābji valad Bāpu, 4 Bom. H. C. R. 5. [Couch, C.J., and Newton, J. July 24, 1867.]

A PRISONER, convicted under s. 380 of the Penal Code of theft in a building used for the custody of property, was sentenced, under s. 75, to fourteen years' transportation, as he had been previously convicted thirteen times of offences now punishable under ch. 17 of the Code with imprisonment for three years or upwards. *Held* that, as all the previous convictions were prior to the passing of the Penal Code, the present offence was not punishable under s. 75.—Reg. v. Kūshyā bin Yesu, 4 Bom. H. C. R. 11. [Couch, C.J., and Newton, J. Sep. 18, 1867.]

HELD by the majority that when a person who had not been "previously convicted" (*vide* s. 4, Act VI. of 1864) is convicted at one time of two or more offences, it is illegal to sentence him to whipping for one of those offences, in addition to imprisonment or fine for the other or others; but it is not illegal to sentence him to one whipping in lieu of all other punishments. *Held* further that when a person who has been "previously convicted" at one time of two or more offences, he may be punished with one, but only one whipping, in addition to any other punishment to which, under s. 46 of the Code of Criminal Procedure, he may be liable.—Nassir v. Chunder and others, 9 W. R. 41; B. L. R. Sup. Vol. 951. [Peacock, C.J., and Seton-Karr, Jackson, Phcar, and Macpherson, JJ. Mar. 12, 1868.]

A CHARGE alleging a previous conviction need not show the extent of the former punishment. Revised form of charge.—Pro., April 17, 1868, 4 Mad. H. C. R. Ap. 11.

SENTENCE of transportation for fourteen years under s. 392 of the Penal Code annulled, as the offence for which such sentence was passed was not committed subsequently to any conviction, and s. 75 had, therefore, been improperly applied. *Semble*, that a Sessions Judge cannot (under s. 75 of the Penal Code, or otherwise), by amalgamating a

sentence which he is competent to pass upon a prisoner with a sentence under which such prisoner is already undergoing imprisonment, and commuting the latter sentence, condemn such prisoner to a longer period of transportation than he is liable to suffer for the crime of which he has last been convicted.—*Reg. v. Sakya valad Kāvji*, 5 Bom. H. C. R. 36, [Newton, Offg. C.J., and Tucker, J. May 20, 1868.]

A SENTENCE of whipping, founded on a previous conviction of the prisoner, is only warranted where the subsequent conviction is for the same specific offence as that in respect of which the previous conviction applied. A Sessions Judge has no power to suspend a sentence in a case in the absence of appeal.—*Pro.*, Oct. 25, 1869, 5 Mad. H. C. R. Ap. 1.

A SENTENCE of whipping under s. 4, Act VI. of 1864, can only be inflicted in addition to other punishment on a second conviction of the offences specified therein, when the first offence was committed some time previous to the second conviction, though after the passing of the Penal Code.—*Queen v. Uday Putnaick and others*, 12 W. R. 68; 4 B. L. R. A. Cr. 5. [Kemp and Glover, JJ. Oct. 28, 1869.]

WHERE a First-class Subordinate Magistrate sentenced a prisoner to six months' rigorous imprisonment under s. 457 of the Penal Code, and, finding that the prisoner was liable to enhanced punishment under s. 75 of the Penal Code, sentenced the prisoner to six months' further imprisonment under s. 46 of the Code of Criminal Procedure, the latter sentence was set aside by the High Court.—*Pro.*, Nov. 2, 1869, 5 Mad. H. C. R. Ap. 3.

FOLLOWS the Full Bench decision ruling, that when a person who has been previously convicted (s. 4, Act VI. of 1864) is a second time convicted at one time of two or more offences, he may be punished with only one whipping in addition to any other punishment to which, under s. 46 of the Code of Criminal Procedure (Act XXV. of 1861), he may be liable.—*Rutton Bewa v. Buhur*; *Jhowla v. Buhur*, 14 W. R. 7. [Loch and Hobhouse, JJ. June 18, 1870.]

TO warrant a sentence awarding additional punishment under s. 75 of the Penal Code as on a second conviction, the evidence that there was a previous conviction against the accused under the Penal Code must be clear and precise.—*Queen v. Naimuddi Sheikh alias Abbas Sheikh*, 14 W. R. 7. [Jackson and Glover, JJ. June 25, 1870.]

A PRISONER convicted of "theft in a dwelling-house," who has previously been convicted of "simple theft," is not thereby rendered liable to whipping under Act VI. of 1864, s. 3.—*Reg. v. Changia valad Shumiā*, 7 Bom. H. C. R. 68. [Westropp, C.J., and Gibbs and Lloyd, JJ. Sep. 22, 1870.]

THE Magistrate convicted the accused under s. 380 of the Penal Code, and a previous conviction having been proved under s. 379 of the Penal Code, sentence of imprisonment and whipping was passed. Held that, in order to justify the sentence of whipping, the previous conviction should have been in respect of the same specific offence.—*Pro.*, Oct. 28, 1870, 5 Mad. H. C. R. Ap. 38.

S. 3 of Act VI. of 1864 (the Whipping Act) applies to juvenile as well as to adult offenders. That section does not apply to cases in which the second conviction is for an offence committed previously to the first conviction.—*Reg. v. Kusā valad Lakshman*, 7 Bom. H. C. R. 70. [Gibbs and Melvill, JJ. Nov. 17, 1870.]

As a rule, before flogging is given as an additional punishment, there ought to be formal evidence upon the record of the previous convictions relied on. The conviction and identity of the prisoner ought to be proved in the regular way. A mere *kafiat* is no evidence whatever.—*Queen v. Nuzee Nushyo*, Appellant, 15 W. R. 52. [Bayley and Macpherson, JJ. April 21, 1871.]

A MERE *kafiat* from the record-office is not sufficient to prove a former conviction against a prisoner. There should be sworn testimony to the fact, and also the identification of the prisoner with the person previously convicted.—*Queen v. Sheikh Ramjan*, Appellant, 15 W. R. 53; 6 B. L. R. Ap. 151. [Kemp and Glover, JJ. April 22, 1871.]

UNDER s. 439 of the new Criminal Procedure Code, if it is intended to prove a previous conviction against an accused person for the purpose of enhancing the punishment, it is necessary to state the fact of that previous punishment in the charge. If it is omitted, it may be added to the charge at any time previous to the sentence being passed, but not after.—*Queen v. Rajcoomar Bose*, 19 W. R. 41. [Kemp and Glover, JJ. Mar. 4, 1873.]



S. 75 of the Penal Code is restricted to offences under chs. 12 and 17 of that Code when the term of imprisonment awardable is three years' imprisonment and upwards, and does not refer to an attempt to commit any of those offences, nor can any case be brought within it merely because the punishment that may be given for it extends to three years and upwards.—*Queen v. Damu Haree*, 21 W. R. 35. [Kemp and Glover, JJ. Jan. 26, 1874.]

A SENTENCE of whipping cannot, with reference to Act VI. of 1864, s. 7, be passed on a conviction for theft under s. 379, Penal Code, as the former section only provides for sentences of imprisonment for a term not exceeding three years. The fact of previous conviction should, under Act X. of 1872, s. 439, be stated in the charge, when it is intended to prove them for the purpose of enhancing punishment. The question of proof of previous conviction is one of fact which ought to go to the jury, and must be determined by a jury.—*Queen v. Esan Chunder Day*, 21 W. R. 40. [Jackson and Ainslie, JJ. Feb. 5, 1874.]

UNDER s. 439, Code of Criminal Procedure, a charge of having committed the offence after a previous conviction therefor should contain an allegation that the offence has been committed after a previous conviction. A statement in a count that at the time when the prisoner committed the offence (no offence being mentioned specifically in the count) he had been previously convicted of offences punishable under ch. 17 of the Penal Code is not a sufficient compliance with the provisions of s. 439.—*Queen v. Sheikh Jakir*, 22 W. R. 39. [Phear and Morris, JJ. July 16, 1874.]

WHERE, soon after his release on expiry of a sentence of seven years' imprisonment on conviction of "receiving stolen property acquired by dacoity," a person is convicted of house-breaking and theft, he is sufficiently punished by a sentence of seven years in transportation. A sentence of transportation for life is too severe. It is not the intention of the Legislature that a previous conviction should so enormously enhance the heinousness of petty offences.—*Shamjee Noshyo*, Appellant, 1 C. L. R. 481. [Jackson and Cunningham, JJ. Feb. 6, 1878.]

WHERE a person commits an offence punishable under ch. 12 or ch. 17 of the Penal Code punishable with three years' imprisonment, and, previously to his being convicted of such offence, commits another such offence punishable under either of such chapters, he is not subject, on being convicted of the second offence, to the enhanced punishment provided in s. 75 of the Penal Code.—*Empress v. Megha*, 1 L. R., 1 All. 637. [Turner, J. April 2, 1878.]

IN charging the jury upon the trial of a prisoner for being dishonestly in the possession of stolen goods, the Judge directed the jury to consider the proof of previous convictions for theft as evidence from which inference might fairly be drawn as to the character of the accused. Held that this amounted to a misdirection; for though s. 54 of the Evidence Act declares that "the fact that the accused person has been previously convicted of an offence is relevant," yet the same section also declares that "the fact that he has a bad character is irrelevant," and that the evidence was irrelevant and inadmissible. Except under very special circumstances, the proper object of using previous convictions is to determine the amount of punishment to be awarded, should the prisoner be convicted of the offence charged.—*Roshun Dossadh v. Empress*, 1 L. R., 5 Cal. 768; 6 C. L. R. 219. [Morris and Prinsep, JJ. Feb. 10, 1880.]

IF a person who has been convicted of an offence punishable, under ch. 12 or ch. 17 of the Penal Code, with imprisonment for a term of three years or upwards, is convicted of an attempt to commit any such offence, he does not thereby become liable to the enhanced punishment allowed by s. 75 of the Code.—*Empress v. Náná Rahim*, 1 L. R., 5 Bom. 140. [Westropp, C.J., and Melvill and Kemball, JJ. Oct. 28, 1880.]

THE provisions of s. 74 of the Bengal Excise Act as to additional punishment, where there has been a "previous conviction for a like offence," contemplate merely the case of the offender having been already convicted of an offence punishable with a fine of Rs. 200 or upwards, and being again convicted of another offence punishable with the same punishment; it is not necessary that he should have been previously convicted of the same offence. The accused were sentenced by the Presidency Magistrate, under ss. 58 and 74 of the Bengal Excise Act, to a fine of Rs. 200 each, in default to three months' imprisonment, and in addition to six months' imprisonment, which was the maximum term that could be awarded under s. 74. Held that the sentence of imprisonment was not in excess of the powers given to the Magistrate by s. 12 of the Presidency Magistrates Act, the imposition of the additional sentence of imprisonment not affecting the Magistrate's powers as regarded the original sentence under s. 58. No limits with regard to any distilleries in Calcutta having been fixed under s. 9 of the Act within which spirituous liquor

manufactured otherwise than in that particular distillery shall be introduced or sold without a special pass, and the fixing of such limits being necessary to a conviction of an offence under s. 58, the convictions in this case were set aside.—*Ram Chunder Shaw v. Empress*, I. L. R., 6 Cal. 575 ; 8 C. L. R. 250. [Morris and Prinsep, JJ. Jan. 5, 1881.]

A PERSON, having been convicted of an offence punishable under s. 457 (ch. 17) of the Penal Code, was subsequently guilty of an attempt to commit such an offence. *Held* that the provisions of s. 75 of the Penal Code were not applicable to such person.—*Empress v. Ram Dial*, I. L. R., 3 All. 773. [Spankie, J. May 6, 1881.]

AN accused person can only be punished under s. 75 of the Penal Code, where the previous conviction has been under that Code.—*Budhun Rujwar v. Empress*, 10 C. L. R. 399. [Cunningham and Tottenham, JJ. Mar. 13, 1882.]

THE object of s. 75 of the Penal Code is to provide for an additional sentence, not a less severe sentence, on a second conviction. Recourse should not be had to that section if the punishment for the offence committed is itself sufficient.—*Sheo Saran Tato v. Empress*, I. L. R., 9 Cal 877. [Prinsep and O'Kinealy, JJ. May 4, 1882.]

THE accused having been previously convicted of offences punishable, under ch. 12 or ch. 17 of the Penal Code, with imprisonment for a term of three years or upwards, was subsequently convicted of an offence under one of these chapters punishable with imprisonment which may extend to three years, and sentenced to imprisonment for seven years. *Held* that a sentence of transportation for seven years was illegal. Under s. 75 of the Penal Code the accused might be transported for life, but he could not be imprisoned for a longer period than six years.—*Empress v. Mábádu*, I. L. R., 6 Bom. 690. [McL-vill and Pinhey, JJ. Sep. 7, 1882.]

IN trials before a jury or assessors, the record should invariably show that reference to a previous conviction was not made until the accused had been convicted of the subsequent offence.—*Kristo Behari Dass v. Empress*, 12 C. L. R. 555. [Cunningham and Maclean, JJ. Mar. 13, 1883.]

WHERE, in a trial by jury, the Sessions Judge called upon the accused to answer at the same time a charge of theft and also a charge of having been previously convicted, the High Court refused to interfere, it not appearing that a failure of justice had been caused by the irregularity.—*Bepin Behary Shaha v. Empress*, 13 C. L. R. 110. [Prinsep and Tottenham, JJ. Aug. 3, 1883.]

IF a prisoner is to be tried for an offence punishable under s. 75 of the Penal Code, a separate charge under that section must be framed and recorded.—*Queen-Empress v. Dorasámi*, I. L. R., 9 Mad. 284. [Kernan and Muttusámi Ayyar, JJ. April 2, 1886.]

THE following is the form of a charge of a previous conviction according to the ruling of the Madras High Court, 17th April 1868, 3 Mad. Jur. 284 : "That he, the said A B, before the committing of the said offence, was convicted, to wit, on the day of in Calendar No. of on the file of , of an offence punishable under chapter xvii. (or xii.) of the Indian Penal Code with imprisonment for a term of three years, to wit, with the offence of , which conviction is still in full force and effect ; and that he, the said A B, is thereby liable to enhanced punishment under s. 75 of the Indian Penal Code, and within," &c.

THE Calcutta High Court has ruled that "the previous conviction of a prisoner should not have been charged against him ; it should have been brought forward by the prosecution after his conviction, and should have been taken into consideration when passing sentence. To enter such a circumstance in a charge would be apt, very improperly, to prejudice the jury trying the case."—1 Wyman's Rev., Civ., and Crim. Rep. C. 26. The practice, however, is different in England, where previous convictions are always entered on the indictment in cases of felony, so as to allow the prisoner to claim a formal trial on that charge also, if he so desire it ; and the count containing the previous conviction is not read to the jury until the prisoner has been convicted of the subsequent offence. In fact, he is not called upon to plead to it, until the other is disposed of against him. In accordance with this practice, the Madras High Court has ruled that "the previous conviction should be made a separate head of charge on the trial for the subsequent offence (Mad. H. C. Rulings, 1864, on s. 75), but that, to prevent any injustice to the prisoner, the procedure should be, "first to try the prisoner on the substantive charge then under inquiry, and, if he should be convicted on that charge, to charge him with, and try the fact of, the previous conviction" (Mad. H. C. Rulings, 1865, on s. 75).

In any inquiry, trial, or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force: (a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or (b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered; together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.—Crim. Pro. Code (Act X. of 1882), s. 511.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date, and place of the previous conviction, shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.—Crim. Pro. Code (Act X. of 1882), s. 221, last para.

In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction for any offence, the procedure laid down in ss. 271, 286, 305, 306, and 309, shall be modified as follows:—

(a.) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(b.) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

(c.) If he answers that he has been so previously convicted, the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.—Crim. Pro. Code (Act X. of 1882), s. 310.

#### CHARGE FOR THEFT AFTER A PREVIOUS CONVICTION.

I, [name and office of Magistrate, &c.], hereby charge you [name of accused person] as follows:—

That you, on or about the      day of      , at      , committed theft, and thereby committed an offence punishable under s. 379 of the Indian Penal Code and within the cognizance of the Court of Session [or High Court, or Magistrate, as the case may be].

And you the said [name of accused] stand further charged that you, before the committing of the said offence, that is to say, on the      day of      , had been convicted by the [state Court by which conviction was had] at      of an offence punishable under Chapter XVII. of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night [describe the offence in the words used in the section under which the accused was convicted], which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under s. 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (iii.).

### CHAPTER. IV.\*

#### GENERAL EXCEPTIONS.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Act done by a person bound, or by mistake of fact believing himself bound, by law.

\* The following chapters of the Penal Code—namely, IV. (General Exceptions), V. (of Abetment), and XXII. (of Attempts to Commit Offences), shall apply to offences punishable under the said sections 121A, 294A, and 304A; and the said Chapters IV. and V. shall apply to offences punishable under the said sections 124A and 225A.—Act XXVII. of 1870, s. 13.

*Illustrations.*

(a.) A, a soldier, fires on a mob by the order of his superior officer, in conformity with the commands of the law. A has committed no offence.

(b.) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

*Good faith.*—Nothing is said to be done or believed in good faith which is done without due care and attention.—Penal Code, s. 52.

THE fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.—Crim. Pro. Code (Act X. of 1882), s. 221.

WHEN a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.—Evidence Act (I. of 1872), s. 105.

**77.** Nothing is an offence which is done by a Judge when acting judicially, in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

ACCORDING to Act XVIII. of 1850 (an Act for the Protection of Judicial Officers), no Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court for any act done or ordered to be done by him in the discharge of his judicial duty,\* whether or not within the limits of his jurisdiction; provided that he at the time, in good faith,† believed himself to have jurisdiction to do or order the act complained of; and no officer of any Court or other person, bound to execute the lawful warrants or orders of any such Judge, Magistrate, Justice of the Peace, Collector, or other person acting judicially, shall be liable to be sued in any Civil Court, for the execution of any warrant or order which he would be bound to execute, if within the jurisdiction of the person issuing the same.

**78.** Nothing which is done in pursuance of, or which is warranted by, the judgment or order of a Court of Justice, if Act done pursuant to the judgment or order of Court. done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

WHEN any action or prosecution shall be brought or any proceedings held against any police-officer for any act done by him in such capacity, it shall be lawful for him to plead that such act was done by him under the authority of a warrant issued by a Magistrate. Such plea shall be proved by the production of the warrant directing the act, and purporting to be signed by such Magistrate; and the defendant shall thereupon be entitled to a decree in his favour, notwithstanding any defect of jurisdiction in such Magistrate. No proof of the signature of such Magistrate shall be necessary, unless the Court shall see reason to doubt its being genuine. Provided always that any remedy which the party may have against the authority issuing such warrant shall not be affected by anything contained in this section.—Police Act (V. of 1861), s. 41.

**79.** Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, in doing it.

\* 3 Bom. A. C. J. 47.

† See 1 Tayl. and Holl 228n.; 6 Mad. H. C. R. 439; 3 Bom. A. C. J. 46; 4 Beng. A. C. J. 37.

*Illustration.*

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the act, seizes Z, in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

The 21st Geo. III., c. 70, s. 24, protecting Provincial Magistrates in India from actions for any wrong or injury done by them in the exercise of their judicial offices, does not confer unlimited protection, but places them on the same footing as those of English Courts of a similar jurisdiction, and only gives them an exemption from liability when acting *bonâ fide* in cases in which they have mistakenly acted without jurisdiction. Trespass will not lie against a Judge for acting judicially, but without jurisdiction, unless he knew, or had the means of knowing, of the defect of jurisdiction, and it lies upon the plaintiff, in every such case, to prove that fact.—*Calder v. Halket*, 2 Moore's I. A. 293. [Lord Brougham, Mr. Baron Parke, Mr. Justice Bosanquet, and the Right Hon. Dr. Lushington. Dec. 5, 1859, and July 4 and 8, 1860.]

THE wounding of a thief by a chaukidar in order to his arrest was held under the circumstances to be justifiable.—*Queen v. Protap Chaukidar*, 2 W. R. 9. [Campbell and Glover, JJ. Jan. 16, 1865.]

THE arrest, under civil process, of a judgment-debtor going to a Court in obedience to a citation to give evidence, and made within the precincts of that Court, and with some show of violence and contempt of Court, does not entitle the officers making the arrest to protection under s. 78, Penal Code.—*Thacoordoss Nundee v. Shunkur Roy and another*, 3 W. R. 53. [Kemp and Seton-Karr, JJ. July 24, 1865.]

A CIVIL Court's bailiff, in executing a process against the moveable property of a judgment-debtor, has no authority to use force and break open a door or gate.—*John Anderson v. J. McQueen*, 7 W. R. 12. [Kemp and Glover, JJ. Jan. 14, 1867.]

THE general exception provided by s. 79 of the Penal Code, and the power conferred by cl. 5, s. 100 of the Code of Criminal Procedure, was held not to protect a police-officer who did not act in good faith, *i.e.*, with due care and attention. Cl. 5, s. 100 of the Criminal Procedure Code, refers to property which is proved to have been stolen, and not to anything which a police-officer may choose to imagine has been stolen. Where a police-officer refused to let a person go home until he had given bail, he was held to have been guilty of wrongful restraint under s. 339 of the Penal Code.—*Sheo Sarun Sahai v. Mahomed Fazil Khan*, 10 W. R. 20. [Loch and Glover, JJ. July 17, 1868.]

THE following facts were held to show that a police-officer did not act in good faith, that is, with due care and attention: "He sees a horse tied up, without any attempt at concealment, in Bookoo's premises; and because the animal happens to resemble one which his father had lost a short time previously, he jumps at once to the conclusion that Bookoo has either stolen the horse himself, or has purchased it from the thief; and he compels Bookoo to account for his possession accordingly. He finds that Bookoo bought the animal from one Sheo Sarun Sahai; so he sends for that individual, charges him with the theft, and compels him to give bail for his appearance whilst an investigation is pending. The sub-inspector never sent for the supposed owner of the horse, nor took the trouble of getting any credible information as to whether it was his father's horse or not. Had he done so, he would have found that that horse had already been found in another place; but, without waiting for such information, and without making any further inquiry, he at once held Sheo Sarun to bail as a person suspected of having come by the animal dishonestly. Cl. 4, s. 54 of the Criminal Procedure Code, 1882, refers to property which is proved to have been stolen, and not to anything which a police-officer may choose to imagine has been stolen." Upon the above facts the High Court held that the sub-inspector had not only not acted with due care and attention, but had not exercised any care or attention at all.—*Sheo Sarun Sahai v. Mahomed Fazil Khan*, 10 W. R. 20. [Loch and Glover, JJ. July 17, 1868.]

THE first defendant, acting as Magistrate, ordered the removal of the plaintiff's house under s. 308 of the Criminal Procedure Code (Act XXV. of 1861) upon the ground that it was a nuisance and obstruction to the public thoroughfare. Held that the house was neither an obstruction nor a nuisance, and that the first defendant had no jurisdiction to direct its removal; but the first defendant having acted in his judicial capacity, and in

good faith believed himself at the time to have jurisdiction, a suit for damages could not be maintained against him.—*Seshaiyangar v. R. Ragunatha Row*, 5 Mad. H. C. Rep. 345. [Scotland, C.J., and Holloway, J. June 20, 1870.]

SUIT to recover damages from defendant, Deputy Magistrate of the zila of Trichinopoly, for a trespass alleged to have been committed in execution of an order made by him under s. 311 of the Criminal Procedure Code (Act XXV. of 1861), directing the demolition of the plaintiff's house as being a nuisance to a public thoroughfare: Defendant denied his liability, alleging in justification of his order that he believed the house to be obstructive to public comfort, and proceeded in accordance with ss. 308, 310, and 311 of the Criminal Procedure Code, and that, having acted in good faith in discharge of his duties as a Magistrate, he was protected by Act XVIII. of 1850. The issues settled were (1) whether the house was an obstruction and nuisance within s. 308 of the Criminal Procedure Code; (2) whether the defendant acted in good faith in the discharge of his public duty in ordering the removal of the house; (3) whether the plaintiff was entitled to the amount of damages claimed. The Civil Judge held, upon the first issue, that the defendant had no jurisdiction to order the removal of the house; upon the second issue, that defendant had not acted with due care and attention, but from feelings of personal animosity towards plaintiff, and was, therefore, not protected by Act XVIII. of 1850. Upon the third issue he assessed the damages at Rs. 500. The defendant appealed, relying mainly upon the objection that no action lay against him, inasmuch as, first, it had not been shown that he acted without jurisdiction in making the order complained of; and, secondly, that even if he had acted without jurisdiction, he acted believing at the time in good faith that he had jurisdiction, and was, therefore, entitled to the protection given by Act XVIII. of 1850. Held, upon the first point, that an entire absence of jurisdiction upon the first point had been shown. Upon the second point, that the facts of the case furnished no reasonable or probable ground for belief in the existence of jurisdiction by a Magistrate of ordinary qualifications; that the defendant must, therefore, be held not to have entertained that belief in good faith, unless the provisions of the Criminal Procedure Code, under which he acted, admit of the view that he might, not unreasonably, think that it was probably intended to apply to such an annoyance as that complained of; that, however, those provisions were open to such a misunderstanding and misapplication by a Magistrate of ordinary qualifications, and consequently that the suit should be dismissed.—*R. Ragunada Rau v. Nathamuni Thathamayyengar*, 6 Mad. H. C. Rep. 423. [Scotland, C.J., and Holloway, J. April 17, May 8, 22, and Nov. 27, 1871.]

A PLAINT against a Judge, averring that the Judge knowingly and maliciously issued an illegal order to the plaintiff's injury, does not disclose a sufficient cause of action against the Judge. It must not only aver that the Judge had no jurisdiction, but also that he had no reasonable and probable cause for supposing that he had jurisdiction.—*Pralhad v. A. C. Watt*, 10 Bom. H. C. Rep. 346. [West, J. Aug. 28, 1873.]

THE removal by a Magistrate of an obstruction in the exercise of the powers conferred upon him by Sch. K, cl. 1, of Beng. Act VI. of 1868, is not a judicial act; and the Magistrate is therefore not protected by Act XVIII. of 1850 from a suit in the Civil Court to try the question of the right of the person against whom the order was made to create the obstruction, and for damages.—*Chunder Narain Singh v. Brojo Bullub Gooie*, 14 B. L. R. 254; 21 W. R. 391. [Couch, C.J., and Jackson and Ainslie, JJ. Mar. 24, 1874.]

RAIYATS are not protected by this section for resistance to distraint of crops where the zamindar's people enter upon the crops with the intention of distraining after notice under s. 116, Act X. of 1859.—*Reg. v. Kanhai Sahua and others*, 23 W. R. 40. [Glover and Mitter, JJ. Feb. 27, 1875.]

A ZAMINDAR is justified in exercising his right of private distraint of crops, if he has served the defaulters with written notices under Act X. of 1859, s. 116; and, in such a case, raiyats who knowingly resist the distraint are not protected by the Penal Code, s. 79. But if the zamindar's people enter upon crops with the intention of distraining without notice, the raiyat-owners are justified in considering such action as trespass. *Quare*.—Would the raiyat in the latter case be protected by the provisions of the Penal Code, ss. 97 and 99, in preventing the distraint, and confining the men employed to make it.—*Queen v. Kanhai Shahu and others*, 23 W. R. 40. [Glover and Mitter, JJ. Feb. 27, 1875.]

ACT XVIII. of 1850 is for the protection of judicial officers acting judicially, and of officers acting under their orders. An officer commanding in cantonments, acting *bona fide* in the discharge of his public duty, and under the belief that a person was dangerous by reason of insanity, caused him to be arrested, in order that he might be examined by

medical officers, and caused him to be detained in his house for that purpose, he not being a dangerous lunatic. The medical officers, while reporting him sane, recommended that he should be placed under the observation of the civil surgeon of the station, for which purpose the same officer caused his further detention. The commanding officer, who, under Act XXII. of 1864, s. 11, had control and direction of the police in the cantonment, did not proceed, or intend to proceed, under s. 4 of Act XXXVI. of 1858. *Held* that, although his belief might have justified the commanding officer, if he had proceeded under the provisions last mentioned, yet he, not having done so, and not having any legal authority for what he had done, was not protected from liability in respect of the above acts. —*Sinclair v. Broughton*, I. L. R., 9 Cal. 341. [Sir Barnes Peacock, Sir M. E. Smith, Sir R. P. Collier, and Sir J. Mellor, JJ. June 23, 1892.]

A MASJID was used by the members of a sect of Mahomedans called the Hanifis, according to whose tenets the word "ámen" should be spoken in a low tone of voice. While the Hanifis were at prayers, R, a Mahomedan of another sect, entered the masjid, and in the course of the prayers, according to the tenets of his sect, called out "ámen" in a loud tone of voice. For this act he was convicted of voluntarily disturbing an assembly engaged in religious worship, an offence punishable under s. 296 of the Penal Code. The Full Bench (Mahmood, J., dissenting) ordered the case to be re-tried, and that, in re-trying it, the Magistrate should have regard to the following questions, namely, (1) Was there an assembly lawfully engaged in the performance of religious worship? (2) Was such assembly, in fact, disturbed by the accused? (3) Was such disturbance caused by acts and conduct on the part of the accused by which he intended to cause such disturbance, or which acts and conduct, and at time of such acts and conduct, he knew or believed to be likely to cause such disturbance? *Held* by Mahmood, J., that the discussion occasioned by the act of the accused having, presumably, taken place during the interval when the prayers were not going on, the assembly was not at that time "engaged in the performance of religious worship," and was not "disturbed" within the meaning of s. 296 of the Penal Code; that in reference to the terms of s. 39 of the Code, the accused did not disturb the assembly "voluntarily;" that he was justified by the Mahomedan ecclesiastical law in entering the mosque, and joining the congregation in saying the word "ámen" loudly if he thought fit, and his conduct fell within the purview of s. 79 of the Penal Code, and was therefore not an offence under s. 296. *Beatty v. Gillbanks* (L. R., 9 Q. B. D. 308) referred to. Also *per* Mahmood, J., that, having regard to the guarantee given by the Legislature in s. 24 of Act VI. of 1871 (Bengal Civil Courts Act), that the Mahomedan law shall be administered in all questions regarding "any religious usage or institution," the Court was bound by s. 57 of Act I. of 1872 (Evidence Act) to take judicial notice of the Mahomedan ecclesiastical law, and the rules of that law need not be proved by specific evidence. —*Queen-Empress v. Ramzan*, I. L. R., 7 All. 461. [Potheram, C.J., and Straight, Oldfield, Brodhurst, and Mahmood, JJ. Mar. 7, 1885.]

THIS chapter has been framed in order to obviate the necessity of repeating in every penal clause a considerable number of limitations. Some limitations relate only to a single provision, or to a very small class of provisions. Thus, the exception in favour of true imputations on character (cl. 470) is an exception which belongs wholly to the law of defamation, and does not affect any other part of the Code. The exception in favour of the conjugal rights of the husband (cl. 359) is an exception which belongs wholly to the law of rape, and does not affect any other part of the Code. Every such exception evidently ought to be appended to the rule which it is intended to modify. But there are other exceptions which are common to all the penal clauses of the Code, or to a great variety of clauses dispersed over many chapters. Such are the exceptions in favour of infants, lunatics, idiots, persons under the influence of delirium; the exceptions in favour of acts done by the direction of the law, of acts done in the exercise of the right of self-defence, of acts done by the consent of the party harmed by them. It would obviously be inconvenient to repeat these exceptions several times in every page. We have therefore placed them in a separate chapter, and we have provided that every definition of an offence, every penal provision, and every illustration of a definition or penal provision, shall be construed subject to the provisions contained in that chapter. P. C. Note B. 15.

No prosecution against any Magistrate, military officer, police-officer, soldier, or volunteer, for any act purporting to be done under this chapter (IX. Unlawful Assemblies), shall be instituted in any Criminal Court, except with the sanction of the Governor-General in Council; and (a) no Magistrate or police-officer acting under this chapter in good faith, (b) no officer acting under s. 131 in good faith, (c) no person doing any act in good faith in compliance with a requisition under s. 128 or s. 130, and (d) no inferior officer, or

soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey, shall be deemed to have thereby committed an offence.—Crim. Pro. Code (Act X. of 1882), s. 132.

**MISTAKE** or ignorance of law is no ground of defence; the general rule being that every person who has capacity to understand the law is presumed to have a knowledge of it. And so far is this principle carried that it has been held that a foreigner could not be allowed to show as a justification of his act (though he might in mitigation of punishment) that it was no offence in his own country, and that he was not aware it was considered wrong where he was tried. And, however hardly it may bear in some few cases, it is evident that the rule is a necessary one. If a criminal could get off by pleading ignorance of law, convictions would probably be rare; nor could society exist for a year, if even a sincere belief in the propriety of his conduct could justify any one who chose to murder or steal.—Arch. 19.

**80.** Nothing is an offence which is done by accident or misfortune, Accident in doing a lawful act, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.

*Illustration.*

A is at a work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

WHERE a horse ran away with its rider, killing a passer-by, it was held that this was a pure accident, and the rider was not held liable, as he had lost all control over the animal (Holmes v. Mather, L. R. 10 Ex. 261); but where two omnibuses were racing, and one ran over a passer-by, it was held that this was not an accident, and that the driver was liable, because he had so urged his horses that he could not stop them afterwards, he having lost the command of them by his own act (1 Russ. 828).

THE caution which the law requires is not the utmost caution that can be used, but such reasonable precaution as is used in similar cases, and has been found by long experience, and in the ordinary course of things, to answer the end.—Alison's Crim. L. 143.

A MAN, having discharged his gun, went out to dine. On his return, he took up the gun, and touched the trigger. The gun went off, killing his wife. He was not aware that in his absence the gun had been loaded by some one. He was acquitted.—Alison's Crim. L. 265.

A MAN, having loaded a fowling-piece with small shot, fired it in a field within an easy shot of a high road, which was used by passers-by. One of the shots killed a girl who was passing by. The evidence showed that the shot was really a long one, being above fifty yards, and that it proved fatal owing to one of the shots penetrating the child's eye, while the other shot hardly penetrated the skin. Under the above circumstances it was held that the death was accidental.—Alison's Crim. L. 144.

**81.** Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Act likely to cause harm, but done without criminal intent, and to prevent other harm—

*Explanation.*—It is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

*Illustrations.*

(a.) A, the captain of a steam-vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat, B, with 20 or 30 passengers on board, unless he changes the course of his vessel, and that, by changing his course, he



must incur risk of running down a boat, C, with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C, and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(b.) A in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

*Held* that a person who placed in his toddy-pots juice of the milk-bush, knowing that, if taken by a human being, it would cause injury, and with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from such pots, and which toddy was drunk by, and caused injury to, certain soldiers who purchased it from an unknown vendor, was rightly convicted, under s. 328 of the Penal Code, of "causing to be taken an unwholesome thing with intent to injure," and that s. 81, which says that, "if an act be done without any criminal intention to cause harm if it is not an offence," did not apply to the case.—*Reg. v. Dhaníá Daji*, 5 Bom. H. C. R. 69. [Newton and Tucker, JJ. July 23, 1868.]

THE following are the remarks of the Indian Law Commissioners in connection with the above section: "Nothing is more usual than for thieves to urge distress and hunger as excuses for their thefts. It is certain, indeed, that many thefts are committed from the pressure of distress so severe as to be more terrible than the punishment of theft, and than the disgrace which that punishment brings with it to the mass of mankind. It is equally certain that when the distress from which a man can relieve himself by theft is more terrible than the evil consequences of theft, those consequences will not deter him from committing theft. Yet it by no means follows that it is irrational to punish him for theft; for though the fear of punishment is not likely to keep any man from theft when he is actually starving, yet it is very likely to keep him from being in a starving state. It is of no effect to counteract the irresistible motive which immediately prompts to theft, but it is of great effect to counteract the motives to that idleness and that profusion which end in bringing a man to that condition in which no law will keep him from committing theft."

Act of a child under seven years of age.

82. Nothing is an offence which is done by a child under seven years of age.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequence of his conduct on that occasion.

IN construing s. 83 of the Penal Code, the capacity of doing that which is wrong is not so much to be measured by years, as by the strength of the offender's understanding and judgment. The circumstances of a case may disclose such a degree of malice as to justify the application of the maxim, *malitia supplet aetatem*.—*Queen v. Mussamut Aimona*, 1 W. R. 43. [Kemp and Glover, JJ. Dec. 14, 1864.]

THE fact that a child has been tried for theft and discharged under s. 215 of the Code of Criminal Procedure, 1872, on the ground of want of understanding within the meaning of s. 82 of the Penal Code, is no bar to the conviction of a person charged under s. 411 of the Penal Code with receiving the property alleged to have been stolen.—*Queen v. Krishna*, 1 L. R., 6 Mad. 373. [Kernan and Muttusámi Ayyar, JJ. April 24, 1883.]

UPON the above section the Indian Law Commissioners remark as follows: "It would seem from this that maturity of understanding is to be presumed in case of such a child unless the negative be proved on the defence." But, according to the English law, during this second period, "an infant shall be *prima facie* deemed to be *doli incapax*, and

presumed to be unacquainted with guilt; yet this presumption will diminish with the advance of the offender's years, and will depend upon the particular facts and circumstances of his case. The evidence of malice, however, which is to supply age, should be strong and clear beyond all doubt and contradiction."—1 Russ. 109.

WHEN any person under the age of 16 years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.—Crim. Pro. Code (Act X of 1882), s. 397.

If a child more than seven and under 14 (under the Penal Code, under 12) is indicted for a felony, it will be left to the jury to say whether the offence was committed by him, and, if so, whether at the time of the commission of the offence the prisoner had a guilty knowledge that he or she was doing wrong; and the presumption of law is that a child of that age has not such guilty knowledge, unless the contrary is proved.—*Per Littledale, J.*, in *Rex v. Owen*, 4 C. V. P. 236. And this maturity of understanding must be affirmatively proved by the prosecution (*Reg. v. Vamplew*, 3 F. & F. 520), and must, in most cases, be inferred from surrounding circumstances.

**84.** Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

THE fact of unsoundness of mind is one which must be clearly and distinctly proved before any jury is justified in returning a verdict under s. 84 of the Penal Code.—*Queen v. Nobin Chunder Banerjee*, 20 W. R. 70; 13 B. L. R. Ap. 20. [Macpherson and Morris, JJ. Oct. 24, 1873.]

S. 84 of the Penal Code lays down the legal test of responsibility in cases of alleged unsoundness of mind. It is by this test, distinguished from the medical test, as that the criminality of an act is to be determined. The accused killed his two young children with a hatchet. The reason given for the crime was that, while he was laid up with fever, the crying of the children annoyed him. It was alleged that the fever had made him irritable and sensitive to sound, but it did not appear that he was delirious at the time of perpetrating the crime. There was no attempt at concealment, and the accused made a full confession. Held that as the accused was conscious of the nature of his act, he must be presumed to have been conscious of its criminality. He was, therefore, guilty of murder.—*Queen-Empress v. Lakshman Dagdu*, 1. L. R., 10 Bom. 512. [Birdwood and Jardine, JJ. Mar. 4 1886.]

**85.** Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

In a case of murder committed in a drunken squabble, it was held that voluntary drunkenness, though it did not palliate any offence, may be taken into account as throwing light upon the question of intention.—*Queen v. Ram Sahoy Bhur and others*, W. R. Sp. 24. [Steer and Glover, JJ. April 29, 1864.]

DRUNKENNESS does not, in the eye of the law, make an offence the more heinous, though it is no excuse; and an act which, if committed by a sober man, is an offence, is equally an offence if committed by one when drunk, if the intoxication was voluntarily caused.—*Queen v. Zoolkar Khan and others*, Appellants, 16 W. R. 36; 8 B. L. R. Ap. 21. [Macpherson and Ainslie, JJ. July 31, 1871.]

**86.** In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been

intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

THE following notes on the above section, taken from Starling's "Indian Criminal Law and Procedure," will be found useful :

"By the English law drunkenness is not any excuse for crime (Pearson's Case, 2 Levin, C. C., 144). Still, by the practice of the Courts in England, it is constantly held that a person who is intoxicated may be incapable of having any intention, and thus the nature of an offence may be considerably reduced, though intoxication does not render him entirely punishable for the act he may have committed while under the influence of liquor. Thus, in a case of stabbing, where the prisoner used a deadly weapon, the fact that he was drunk does not at all alter the nature of the case; but if he had intemperately used an instrument not in its nature a deadly weapon at a time when he was drunk, the fact of his being drunk might induce the jury to less strongly infer a malicious intent in him at the time.—*Per Alderson, B., in Rex v. Meakin, 7 C. and P. 297.*

"Again, Parke, B., says that, if a man is drunk, this is no excuse for any crime he may commit; but where provocation by a blow has been given to a person who kills another with a weapon which he happens to have in his hand, the drunkenness of the prisoner may be considered on the question whether he was excited by passion or acted from malice; as also it may be on the question whether expressions used by the prisoner manifested a deliberate purpose, or were the idle expression of a drunken man.—*Rex v. Thomas, 7 C. and P. 817.*

"In a third case, Crowder, J., laid it down that, though drunkenness is no excuse for crime, it may be taken into account by the jury when considering the motive or intent of a person acting under its influence.—*Reg. v. Gamlen, 1 F. and F. 90.*

"Where, on a trial of an indictment for an attempt to commit suicide, it appeared that the prisoner was, at the time of the commission of the alleged offence, so drunk that she did not know what she was doing, it was held that this negatived the intent to commit suicide.—*Reg. v. Moore, 3 C. and K. 319; 16 Jur. 750.*"

**87. Nothing, which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.**

#### *Illustration.*

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

**88. Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.**

#### *Illustration.*

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

THE benefit alluded to in this section must be some physical benefit, that is, the alleviation of some disease, or diseased or disorganized condition of some part or member of the body. Thus, if a man, desiring to enter the society of eunuchs, induces another to castrate him, the operator is liable for the consequences of the emasculation. And in the case of *Reg. v. Baboolun Hijrah* (5 W. R. 7), it was held that where a man of full age (over 18 years) voluntarily submitted himself, for the cure of no disease, to emasculation, performed neither by a skilful hand nor in the least dangerous way, and died from the injury, the persons concerned in the act were guilty of culpable homicide, although not only did they not know that emasculation was unlawful, but believed that a man might cause himself to be emasculated if he pleased.

**89. Nothing, which is done in good faith for the benefit of a person**

Act done in good faith for benefit of child or insane person, by or by consent of guardian.

under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person: Provided—

*First.*—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

*Secondly.*—That this exception shall not extend to the doing of any thing which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

*Thirdly.*—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

*Fourthly.*—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

*Illustration.*

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

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SEXUAL intercourse by a man with a woman without her free consent, i. e., a consent obtained without putting her in fear of injury, amounts to rape; and the Judge should leave the question to the jury, and not direct them to find that the woman's consent after a considerable struggle renders the charge of rape nugatory.—*Queen v. Akbar Kazee*, 1 W. R. 21. [Kemp and Glover, JJ. Nov. 11, 1864.]

IN a case of murder by consent, held that evidence of consent, which would be sufficient in a civil transaction, must be equally sufficient in exculpation of a prisoner's guilt.—*Queen v. Anunta Rurnagat*, 6 W. R. 57. [Kemp and Markby, JJ. Aug. 25, 1866.]

**90. A consent is not such a consent as is intended by any section of**

Consent known to be given under fear or misconception.

this Code, if the consent is given by a person under fear of injury or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or

If the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

**91.** The exceptions in sections 87, 88, and 89, do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Consent of a child or person of unsound mind.  
Exclusion of acts which are offences independently of harm caused.

#### *Illustration.*

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore it is not an offence "by reason of such harm;" and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

**92.** Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided—

*First.*—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

*Secondly.*—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

*Thirdly.*—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

*Fourthly.*—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

#### *Illustrations.*

(a.) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(b.) Z is carried off by a tiger. A fires at the tiger, knowing it to be likely that the shot may kill Z, but not intending to kill Z, and in good faith intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(c.) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending, in good faith, the child's benefit. A has committed no offence.

(d.) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

*Explanation.*—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89, and 92.

THE benefit alluded to in this section must be some physical benefit, that is, the alleviation of some disease or diseased or disorganized condition of some part or member of the body. Thus, if a man, desiring to enter the society of eunuchs, induces another to castrate him, the operator is liable for the consequences of the emasculation. And in the case of *Reg. v. Baboolun Hijrah* (5 W. R. 7), it was held that where a man of full age (over 18 years) voluntarily submitted himself, for the cure of no disease, to emasculation, performed neither by a skilful hand nor in the least dangerous way, and died from the injury, the persons concerned in the act were guilty of culpable homicide, although not only did they not know that emasculation was unlawful, but believed that a man might cause himself to be emasculated if he pleased.

### 93. No communication made in good faith is an offence by reason of

Communication made in any harm to the person to whom it is made, if it is good faith, made for the benefit of that person.

#### *Illustration.*

A, a surgeon in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

### 94. Except murder and offences against the State, punishable with

death, nothing is an offence which is done by a person Act to which a person is death, nothing is an offence which is done by a person compelled by threats. person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

*Explanation 1.*—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits, knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

*Explanation 2.*—A person seized by a gang of dacoits, and forced, by threat of instant death, to do a thing which is an offence by law—for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it—is entitled to the benefit of this exception.

A PRISONER, in order to obtain the benefit of this section, must show that the act was done under fear of instant death. Therefore, persons giving false evidence under the alleged influence of a threat are not protected by this section.—*Reg. v. Sonoo*, 10 W. R. 48. [Glover, J. Oct. 28, 1868.]

### 95. Nothing is an offence by reason that it causes, or that it is intended

to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

THE Law Commissioners, in framing the above section, state: "This section is intended to provide for those cases which, though from the imperfections of language they fall within the letter of the law, are yet not within its spirit, and are all over the world considered by the public, and for the most part dealt with by the tribunals, as innocent. As our definitions are framed, it is theft to dip a pen in another man's ink, mischief to crumble one of his wafers, an assault to cover him with a cloud of dust by riding past

him, hurt to incommode him by pressing in getting into a carriage. There are innumerable acts without performing which men cannot live together in society, acts which all men constantly do and suffer in turn, and which it is desirable that they should do and suffer in turn, yet which differ only in degree from crime. That these ought not to be treated as crime is evident, and we think it far better expressly to except them from the penal clauses of the Code than to leave it to the Judges to except them in practice."

CONVICTION and sentence by a Magistrate reversed, as the act of which the accused were convicted—taking pods (almost valueless) from a tree standing upon Government waste ground—came within the meaning of s. 95 of the Penal Code, and did not, therefore, amount to an offence.—*Reg. v. Kásyá bin Rávji*, 5 Bom. II. C. R. 35. [Newton, Offg. C.J., and Tucker, J. May 20, 1868.]

THE pain caused by a blow across the chest with an umbrella was held to be not of such a trivial character as to come within the meaning of the Penal Code, s. 95.—*Govt. of Bengal v. Sheo Golam Lalla*, 24 W. R. 67. [Glover and Mitter, JJ. Nov. 22, 1875.]

### OF THE RIGHT OF PRIVATE DEFENCE.

Things done in private defence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

WHERE a person, assisted by a friend, retaliated severely on another, who trespassed into his house with the object of having intercourse with his wife, he was held to have committed no offence, ss. 96 and 104, Penal Code, justifying him in causing any harm short of death to the trespasser; and his friend was also acquitted as having aided him to commit no offence.—*Queen v. Dhamun Teli and another*, 20 W. R. 36. [Markby and Birch, JJ. June 16, 1873.]

Right of private defence of the body and of property.

97. Every person has a right, subject to the restrictions contained in s. 99, to defend—

*First*.—His own body, and the body of any other person, against any offence affecting the human body;

*Secondly*.—The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

A COMMITS no offence, if, in the exercise of the right of private defence of his property against B, whom he finds near a hole in A's house, and, on being attacked by B, he strikes a blow at random, and in the dark, with a stick in his hand, whereby B is killed. C and D, by assisting A in removing the body of B, cannot be convicted (under s. 201 of the Penal Code) of having caused evidence to disappear, they having no knowledge or belief that an offence had been committed, nor any intention of screening an offender.—*Queen v. Pelko Nushyo and others*, 2 W. R. 43. [Kemp and Glover, JJ. Mar. 15, 1865.]

THE following is the judgment of the High Court in a case of exercise of right of private defence of property against a thief who was seized in the act of committing a burglary in the house of the accused: "In this case the Sessions Judge has convicted the prisoner of culpable homicide not amounting to murder, and sentenced him to three years' simple imprisonment. It appears that he seized a thief in the act of committing a burglary in his house, and that the thief was found, on the villagers assembling, to be dead. The prisoner says that he struck the thief one blow with a lathi; but the Sessions Judge and the assessors disbelieved this, as the medical officer who examined the body (as the Sessions Judge reports) deposed that death resulted from strangulation. We find, on looking at this report and deposition, that the thief's death was caused by suffocation; and there seems to be no doubt, from the evidence, that the act of the prisoner in seizing and holding the thief, whose face was downwards, as he was getting into the house, caused the suffocation. We are not satisfied that, in exercising his right of private defence of property against the thief, the prisoner exceeded the provision of the law; and we, therefore, acquit the prisoner, and direct his release."—*Reg. v. Kurrin Bux*, 3 W. R. 12. [Jackson and Glover, JJ. May 12, 1865.]

WHERE A is in actual peaceable possession of land, B's attempt to recover possession of it by force is an illegal act, which A has a right to resist. If B uses force in carrying out his attempt, A has a right to oppose force to force, and to inflict upon B such injury as is necessary to compel him to desist.—*Queen v. Saobee alias Sachee Boler*, 7 W. R. 76. [Markby and Glover, JJ. May 29, 1867.]

WHERE the accused, whose property had frequently been stolen, went out with a lathi to watch his property, and with the lathi struck a thief, who died from the effects of the blows, it was *held* (having regard to the nature of the injuries inflicted, and to the subsequent conduct of the accused) that the case did not fall within the 4th exception to s. 99, and that the prisoner was not guilty of culpable homicide not amounting to murder, but was protected by ss. 97 and 104 of the Penal Code, and had not exceeded the legal right of private defence of property.—*Queen v. Mokee*, 12 W. R. 15. [Norman and Jackson, JJ. June 28, 1867.]

WHERE A trespassed on the lands of B, whose servants seized and confined A till the following day, when B gave information to the police, it was *held* that the conduct of B and his servants in confining A could not be supported on the ground that they were exercising the right of private defence of property, under ss. 97, 104, and 105 of the Penal Code.—*Shurufoddin v. Kassinath*, 13 W. R. 64. [Loch and Hobhouse, JJ. April 23, 1870.]

HELD, on the facts of the case (and following 7 W. R. 113), that the accused, who were in peaceable possession of their property, and were attacked while in such possession, did not exceed the right of private defence of property under s. 103, Penal Code.—*Queen v. Georoo Churn Chung and others*, Appellants, 14 W. R. 69; 6 B. L. R. Ap. 9. [Kemp and Glover, JJ. Nov. 19, 1870.]

A ZAMINDAR is justified in exercising his right of private distraint of crops, if he has served the defaulters with written notices under Act X. of 1859, s. 116: and, in such a case, raiyats, who knowingly resist the distraint, are not protected by the Penal Code, s. 79. But if the zamindar's people enter upon crops with the intention of distraining without notice, the riyat-owners are justified in considering such action as trespass. *Quære*.—Would the raiyats in the latter case be protected by the provisions of the Penal Code, ss. 97 and 99, in preventing the distraint, and confining the men employed to make it?—*Queen v. Kanhai Shabu and others*, 23 W. R. 40. [Glover and Mitter, JJ. Feb. 27, 1875.]

WHERE both parties are armed and prepared to fight, it is immaterial who is the first to attack, unless it is shown that the party was acting within the legal limits of the right of private defence.—*Kalee Beparee and others*, Appellants, 1 C. L. R. 521. [Jackson and Cunningham, JJ. Mar. 5, 1878.]

A DISTURBANCE having been created with reference to the possession of certain church-land, the Sessions Judge on appeal found that certain persons had unlawfully trespassed thereupon, and that the accused had been justified in resisting the trespassers by force. Inasmuch, however, as he considered the accused had exceeded their right of private defence of their property, he convicted them of rioting under s. 143 of the Penal Code. *Held* that, on the findings of the Judge, the conviction could not be supported, inasmuch as on such findings the persons convicted were not members of an unlawful assembly.—In the Matter of Kalee Mundle and others, Petitioners, 10 C. L. R. 278. [Mitter and Maclean, JJ. Feb. 21, 1882.]

WHERE the accused had been convicted of riot under s. 148 and of grievous hurt under s. 325 of the Penal Code, the Sessions Judge on appeal held that the complainants had themselves been the aggressors, and that the accused had merely exercised the right of private defence; but inasmuch as they had not set up the plea of private defence, he considered it was not competent to him to set aside the conviction. *Held* that, on the finding of the Sessions Judge, the accused were entitled to an acquittal.—In the Matter of Kali Churn Mookerjee and others, Petitioners, 11 C. L. R. 232. [Prinsep and O'Kinealy, JJ. May 22, 1882.]

98. When an act, which would otherwise be a certain offence, is not that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication, of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Right of private defence against the act of a person of unsound mind, &c.

that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication, of the person doing

that act, or by reason of any misconception on the part of that person,

every person has the same right of private defence against that act which

he would have if the act were that offence.



*Illustrations.*

(a.) Z, under the influence of madness, attempts to kill A. Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(b.) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

**99. First.**—There is no right of private defence against an act which

Acts against which there is no right of private defence.

does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

**Second.**—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

**Third.**—There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

**Fourth.**—The right of private defence in no case extends to the inflict-

Extent to which the right may be exercised.

ing of more harm than it is necessary to inflict for the purpose of defence.

**Explanation 1.**—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

**Explanation 2.**—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction, or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.

THE right of private defence cannot be pleaded by persons who, believing they will be attacked, court the attack.—*Queen v. Nowabdee and others*, W. R. Sp. 11. [Steer, J. Feb. 19, 1864.]

HELD by the majority of the Court that the offence committed was murder where the death of a weak half-starved old woman, who was detected stealing, was caused in the exercise of the right of private defence, by the doing of more harm than was necessary for the purpose of such defence; *Campbell, J., contra*, being of opinion that a man who detects a thief stealing his property, and who, acting on the sudden impulse of the moment, inflicts on the thief blows so severe as to be likely to cause death, but which he did not at the time know or feel to be likely to cause death, and which would not necessarily have caused death to a person in ordinary health, but which, owing to abnormal weakness in the deceased not known to him, did cause death, is not guilty of murder, but of culpable homicide not amounting to murder.—*Queen v. Gokool Bowree and others*, 5 W. R. 33. [Norman, Campbell, and Phear, JJ. Feb. 26, 1866.]

HELD by the majority of the Court (*Campbell, J., dissenting*) that when a person wilfully killed another whilst endeavouring to escape after having been detected in the act of house-breaking by night for the purpose of theft, the offence committed was murder, and could not be considered to have been committed in the exercise of the right of

private defence either of person or property, nor under grave and sudden provocation.—*Queen v. Durwan Geer*, 5 W. R. 73; 1 Ind. Jur. 253. [*Jackson, Campbell, and Macpherson, JJ.* April 7, 1866.]

In a case of culpable homicide not amounting to murder, it was held that, though the occasion might have been one in which the prisoner was justified in meeting force by force, still as he inflicted a blow which he must have known was likely to cause death, he had exceeded his right of private defence with reference to cl. 4, s. 99 of the Penal Code.—*Queen v. Fuzza Meeah alias Fuzza Mahomed*, 6 W. R. 89. [*Kemp and Markby, JJ.* Dec. 13, 1866.]

THERE can be no right of private defence, either on one side or the other, in a case of premeditated riot.—*Queen v. Jeollall and others*, 7 W. R. 34. [*Glover and Kemp, JJ.* Feb. 18, 1867.]

AN officer, subordinate to an officer in charge of a police-station, who was deputed by the latter to make an inquiry under s. 135 of the Code of Criminal Procedure, attempted, without a search-warrant, to enter a house in search of property alleged to have been stolen, and was obstructed and resisted. *Held* (applying s. 99 of the Penal Code) that, even though the police-officer was not strictly justified in searching the house without a warrant, the person obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of his obstruction, as it was not shown that that officer was acting otherwise than in good faith and without malice. A Magistrate acting judicially should not import into the case before him his previous knowledge of the character of the accused, but should determine his guilt or innocence upon the evidence given in the case.—*Reg. v. Vyankatrav Shrinivas*, 7 Bom. H. C. R. 50. [*Gibbs and Melvill, JJ.* June 15, 1870.]

THE right of private defence under s. 103 of the Penal Code is restricted by s. 99 of that Code, and does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence.—*Queen v. Dhununjai Poly and others*, 14 W. R. 68. [*Kemp, J.* Nov. 14, 1870.]

THE High Court declined to interfere in four cases of dismissal by the Magistrate and Deputy Magistrate referred by the Judge—the first, because the Judge considered that mere persistence in demand of rent did not amount to trespass justifying the right of private defence as held by the Magistrate; the second, because the Judge considered that the Magistrate's reasons, *viz.* (1) want of explanation of the cause of complainant's presence on the spot where the alleged assault was committed, (2) want of explanation of delay in making complaint, and (3) want of material evidence in the shape of bruises, were not sufficient in law to justify a summary dismissal; the third, because the Judge considered that the mere assertion of a claim to land by the accused did not justify the dismissal of the criminal charge as to theft of its produce, and that the Deputy Magistrate should be directed to hold a proper inquiry and dispose of the case after recording evidence; and the fourth, because the Judge considered that delay in making complaint was not of itself a legal ground for dismissal, particularly where an explanation of the delay is tendered.—(1) *Mahomed Jan v. Khadi Sheikh*, (2) *Hur Nath De Khashkhil v. Jyogopal De Sircar*, (3) *Huris Chundra Das v. Bolai Audhicaree and others*, (4) *Sheik Ahmuddy v. Anund Mohun Mozoomdar*, 16 W. R. 65. [*Bayley and Markby, JJ.* Dec. 13, 1871.]

THE firing of a gun at persons at a distance of twenty-five yards, without a reasonable apprehension of danger, and without any necessity for so doing, is not justifiable by the right of private defence.—*Queen v. Hussainuddy and others*, 17 W. R. 46. [*Couch, C.J., and Ainslie, J.* April 5, 1872.]

A SESSIONS Judge, holding a second trial, should not comment on the conduct of a previous trial. It is for those who raise the plea of private defence to prove it. The act charged cannot be denied, and the plea of private defence raised as an alternative. If raised, a full account of the occurrence must be given in evidence.—*Jamshcer Sirdar and others, Appellants*, 1 C. L. R. 62. [*Ainslie and McDonoll, JJ.* June 29, July 24, 1877.]

A HEAD-CONSTABLE, making an investigation into a case of house-breaking and theft, searched the tents of certain gypsies for the stolen property, but discovered nothing. After he had completed the search, the gypsies gave him a certain sum of money, which he accepted, but at the same time, not deeming it sufficient, he demanded a further sum from them. They refused to give anything more, on the ground that they were poor, and had no more to give. Thereupon he unlawfully ordered one of them to be bound and taken away. On his subordinates proceeding to execute such order, all the gypsies in the camp, men, women, and children, turned out, some four or five of the men being armed with sticks and stones, and advanced in a threatening manner towards the place such gipsy was

being bound and the head-constable was standing. Before any actual violence was used by the crowd of advancing gipsies, the head-constable fired with a gun at such crowd, when it was about five paces from him, and killed one of the gipsies, and, having done so, ran away. Any apprehension that death or grievous hurt would be the consequence of the acts of such crowd would have ceased had he released the gipsy he had unlawfully arrested, and withdrawn himself and his subordinates, or had he effected his escape. *Held* that such head-constable had not a right of private defence against the acts of such gipsies, as those acts did not reasonably cause the apprehension that death or grievous hurt would be their consequence, and such head-constable was guilty of culpable homicide amounting to murder.—*Empress v. Abdul Hakim*, I. L. R., 3 All. 253. [Pearson and Straight, JJ. Oct. 5, 1880.]

A WARRANT issued for the arrest of a debtor under the provisions of s. 251 of the Civil Procedure Code was initialled by the Munsarim of the Court, sealed with the seal of the Court, and delivered to the proper officer for execution. The debtor forcibly resisted the officer, and was tried and convicted, under s. 353 of the Penal Code, of assaulting a public servant in the execution of his duty as such. In revision, it was contended, with reference to the requirements of s. 251 of the Civil Procedure Code, that the warrant of arrest, having been initialled only, was bad, and the officer could not legally execute it, and consequently no offence under s. 353 of the Penal Code had been committed. *Held* that this contention could not be allowed, and, although it was proper that the person signing a warrant should write his name in full, it could not be said that because the signature was confined to the initials of the name, it was not the duty of the officer to execute the warrant. *Held* also, with reference to s. 99 of the Penal Code, that the act of the accused did not cease to be an offence on the ground that it was done in the exercise of the right of private defence.—*Queen-Empress v. Janki Prasad*, I. L. R., 8 All. 293. [Oldfield, J. May 4, 1886.]

**100.** The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :—

When the right of private defence of the body extends to causing death.

tions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely :—

*First*.—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault ;

*Secondly*.—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault ;

*Thirdly*.—An assault with the intention of committing rape ;

*Fourthly*.—An assault with the intention of gratifying unnatural lust ;

*Fifthly*.—An assault with the intention of kidnapping or abducting ;

*Sixthly*.—An assault with the intention of wrongfully confining a person, under circumstances which may reasonably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

A COMMITS no offence, if, in the exercise of the right of private defence of his property against B, whom he finds near a hole in A's house, and, on being attacked by B, he strikes a blow at random, and in the dark, with a stick in his hand, whereby B is killed. C and D, by assisting A in removing the body of B, cannot be convicted (under s. 201 of the Penal Code) of having caused evidence to disappear, they having no knowledge or belief that an offence had been committed, nor any intention of screening an offender.—*Queen v. Pelko Nushyo and others*, 2 W. R. 43. [Kemp and Glover, JJ. Mar. 15, 1865.]

THE legal right of private defence of the body and property is not exceeded by a person who is attacked by another with a spear, and who strikes a blow with a lathi, which results in the death of the party attacking ; and such right of private defence of the body extends under s. 100 of the Penal Code to the taking of life where grievous hurt is reasonably apprehended.—*Queen v. Moizudin and others*, 11 W. R. 41. [Jackson and Markby, JJ. April 29, 1869.]

HELD that it was no misdirection on the part of the Judge in not calling the attention of the jury to cls. 1 and 2 of s. 100 of the Penal Code, when he particularly called their attention to cl. 6 of that section.—*Queen v. Mooktaram Mundle*, 17 W. R. 45. [Kemp and Glover, JJ. Mar. 23, 1872.]

THE right of private defence of person and property was not allowed to be pleaded in a case where there was no fear of an assault such as is described in the clauses of s. 100 of the Penal Code, and where the prisoners used deadly weapons (spears), and killed two unarmed persons whom they found ploughing land which the prisoners believed to be theirs.—*Queen v. Gour Chand Chung and another*, 18 W. R. 29. [Kemp and Glover, JJ. July 18, 1872.]

UNDER the facts of this case, a person was held to have rightly exercised the right of private defence as contemplated in cl. 2, s. 100, and cl. 4, s. 103, Penal Code, though in the exercise of such right he killed one of his aggressors.—*Queen v. Ram Lall Singh and others*, 22 W. R. 51. [Jackson and McDonell, JJ. July 30, 1874.]

**101.** If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in s. 99, to the voluntary causing to the assailant of any harm other than death.

IN case of hurt or grievous hurt, the question should be considered as to who was the aggressor, and whether the offence was committed in the exercise of the right of private defence.—*Queen v. Sohun and another*, 2 W. R. 59. [Campbell and Jackson, JJ. April 10, 1865.]

DISPUTE between two parties (the Mollahs and Shikdars), in which the Shikdars attacked and killed one of the Mollahs when exercising the right of retaking their own property; three of the Shikdars being also wounded. The Shikdars were convicted of culpable homicide not amounting to murder, and rioting. As to the Mollahs, Loch, J., was of opinion that they were guilty of voluntarily causing grievous hurt; while the majority of the Court held that they were entitled to the protection conferred by s. 101, Penal Code, on those who, while exercising the right of private defence, caused their assailants any harm other than death.—*Queen v. Tanoo Shikdar and others*, 3 W. R. 47. [Loch, Kemp, and Seton-Karr, JJ. July 17, 1865.]

**102.** The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

THE prisoner and the deceased met each other at a liquor-shop, and drank together. Afterwards they walked away together, a third person who had been drinking with them following them. In the way an altercation took place in respect of the deceased having, as alleged by the prisoner, caused the death of the prisoner's four children by incantations. According to the prisoner's account, the deceased admitted having done so, and added that he would also bring about the death of the prisoner; in short, that he would not allow him to leave the jungle alive, but would cause him to be taken and eaten by a tiger. Thereupon the prisoner stated that he killed the deceased with several blows of a heavy lathi. It was held that the prisoner had no reasonable apprehension of danger to himself from the threats of the deceased, whom he killed; and that, therefore, the right of private defence of the body did not arise, and the case was not taken out of the category of murder by reason of the second exception to s. 300 of the Penal Code.—*Queen v. Gobadur Bhuyan*, 18 W. R. 55; 4 B. L. R. Ap. 101. [Jackson and Glover, JJ. April 6, 1870.]

**103.** The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely:

*First.*—Robbery;

*Secondly.*—House-breaking by night;

*Thirdly.*—Mischief by fire committed on any building, tent, or vessel, which building, tent, or vessel is used as a human dwelling, or as a place for the custody of property ;

*Fourthly.*—Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

IN an affray respecting land one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. *Held* that the prisoners, not being legally guilty of culpable homicide, were not legally guilty of any other offence coupled with rioting, and, not being rioters, or members of an unlawful assembly, could claim the benefit of s. 104, Penal Code.—*Queen v. Mitto Singh and others*, 3 W. R. 41. [Seton-Karr and Campbell, JJ. July 11, 1865.]

IN investigating a case of dispute as to land between two parties, a Magistrate found that one party was in possession ; but there being a charge against both parties of rioting under s. 147 of the Penal Code, he punished both parties. The High Court held that the party in possession were protected by s. 104 of the Penal Code ; and the punishment inflicted on them for maintaining their possession was accordingly remitted.—*Toolsee Sing and others*, Reference in the Case of, 2 B. L. R. 9 ; 1 W. R. 69. [Loch and Glover, JJ. Dec. 21, 1868.]

THE right of private defence under s. 103 of the Penal Code is restricted by s. 99 of that Code, and does not extend to the inflicting of more harm than it is necessary to inflict for the purpose of defence.—*Queen v. Dhununjai Poly and others*, 14 W. R. 68. [Kemp, J. Nov. 14, 1870.]

CERTAIN persons made a sudden attack upon the prisoners for the purpose of cutting their crops. The prisoners resisted, and, having no time to complain to the police, inflicted a wound upon one of the assailants with a bamboo, from the effects of which he afterwards died. The Sessions Judge convicted the prisoners under ss. 148 and 304. In appeal the High Court held that the force used and the injuries inflicted were not such as to exceed the right of private defence of property, and directed an acquittal.—*Queen v. Gooroo Churn Chung and others*, 6 B. L. R. Ap. 9 ; 14 W. R. 69. [Kemp and Glover JJ. Nov. 19, 1870.]

UNDER the facts of this case, a person was held to have rightly exercised the right of private defence as contemplated in cl. 2, s. 100, and cl. 4, s. 103, Penal Code, though in the exercise of such right he killed one of his aggressors.—*Queen v. Ram Lall Singh and others*, 22 W. R. 51. [Jackson and McDonell, JJ. July 30, 1874.]

#### 104. If the offence, the committing of which, or the attempting to com-

mit which, occasions the exercise of the right of private defence, be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, the right does not extend to the voluntary causing of death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

IN an affray respecting land, one party were the aggressors, and the other side (had the affair not ended fatally) would have been in the legal exercise of the right of defence of property, and would have been entitled to the benefit of s. 104 of the Penal Code. *Held* one year's imprisonment was sufficient punishment for the latter.—*Queen v. Shunkor and others*, 1 W. R. 34. [Kemp and Glover, JJ. Dec. 5, 1864.]

IN an affray respecting land one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. *Held* that the prisoners, not being legally guilty of culpable homicide, were not legally guilty of any other offence coupled with rioting, and, not being rioters, or members of an unlawful assembly, could claim the benefit of s. 104, Penal Code.—*Queen v. Mitto Singh and others*, 3 W. R. 41. [Seton-Karr and Campbell, JJ. July 11, 1865.]

WHERE the accused, whose property had frequently been stolen, went, armed with a lathi, to watch his property, and with the lathi struck a thief, who died from the effects of the blow, *held* (having regard to the nature of the injuries inflicted and the subsequent

conduct of the accused) that the case did not fall within the 4th clause of s. 97, and that the prisoner was not guilty of culpable homicide not amounting to murder, being protected by ss. 97 and 104, he not having exceeded the legal right of private defence of property.—*Queen v. Mokee*, 12 W. R. 15. [Norman and Jackson, JJ. June 28, 1867.]

IN investigating a case of dispute as to land between two parties under ch. 22 of the Code of Criminal Procedure (Act XXV. of 1861), a Magistrate found that one party was in possession, but there being a charge against both parties of rioting under s. 147 of the Penal Code, he punished both parties. *Held* that the party in possession were protected by s. 104 of the Penal Code; and the punishment inflicted in maintaining their possession on them was accordingly remitted.—Reference in the Case of *Tooisee Singh and others*, 10 W. R. 64; 2 B. L. R. A. Cr. 16. [Loch and Glover, JJ. Dec. 21, 1868.]

WHERE A trespassed on the lands of B, whose servants seized and confined A till the following day, when B gave information to the police, it was held that the conduct of B and his servants in confining A could not be supported on the ground that they were exercising the right of private defence of property under ss. 97, 104, and 105 of the Penal Code.—*Shurufoddin v. Kassinath*, 13 W. R. 64. [Loch and Hobhouse, JJ. April 23, 1870.]

CERTAIN persons made a sudden attack upon the prisoners for the purpose of cutting their crops. The prisoners resisted, and, having no time to complain to the police, inflicted a wound upon one of the assailants with a bamboo, from the effects of which he afterwards died. The Sessions Judge convicted the prisoners under ss. 148 and 304. In appeal to the High Court, *held* that the force used and the injuries inflicted were not such as to exceed the right of private defence of property, and directed an acquittal.—*Queen v. Gooroo Churn Chung and others*, 6 B. L. R. Ap. 9; 14 W. R. 69. [Kemp and Glover, JJ. Nov. 19, 1870.]

WHERE the offence which occasions the right of private defence of property is criminal trespass, the right of defence under s. 104 of the Penal Code only extends (subject to the restrictions of s. 99) to the voluntarily causing to the wrong-doers some harm other than death.—*Queen v. Goburdhun Pari and another*, Appellants, 14 W. R. 74. [Bayley and Glover, JJ. Nov. 30, 1870.]

WHERE a person, assisted by a friend, retaliated severely on another, who trespassed into his house with the object of having intercourse with his wife, he was held to have committed no offence, ss. 96 and 104, Penal Code, justifying him in causing any harm short of death to the trespasser; and his friend was also acquitted as having aided him to commit no offence.—*Queen v. Bhauman Teli and another*, 20 W. R. 36. [Markby and Birch, JJ. June 16, 1873.]

Commencement and continuance of the right of private defence of property.

**105. First.**—The right of private defence of property commences, when a reasonable apprehension of danger to the property commences.

**Second.**—The right of private defence of property against theft continues till the offender has effected his retreat with the property, or the assistance of the public authorities is obtained, or the property has been recovered.

**Third.**—The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

**Fourth.**—The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

**Fifth.**—The right of private defence of property against house-breaking by night continues as long as the house-trespass which has been begun by such house-breaking continues.

AN affray having taken place, both parties turned out armed with deadly weapons. *Held* that there was no right of private defence, as both parties well knew beforehand what was likely to happen. The factory had no right forcibly to attempt to sow indigo in land already sown with corn, although it was indigo-contract land. The villagers had

no right to oppose force to force, the police-station being near at hand.—*Reg. v. Jeolall and two others*, 3 Wyman's Rev., Civ., and Crim. Reporter, 21; 7 W. R. 34. [*Glover and Kemp*, JJ. Feb. 18, 1867.]

WHERE land in the possession of A was encroached on by the servants of B, who committed mischief on the land, and the servants of A assembled and resisted the encroachments, the High Court declined to interfere with the Magistrate's order convicting the servants of A of unlawful assembly, as there was no error in law in the order of the Magistrate, who found as a fact that the right of defence of private property had ceased under cl. 4, s. 105 of the Penal Code.—*Queen v. Rajkristo Doss and others*, 12 W. R. 43. [*Kemp and Markby*, JJ. Aug. 3, 1869.]

WHERE A trespassed on the lands of B, whose servants seized and confined A till the following day, when B gave information to the police, it was held that the conduct of B and his servants in confining A could not be supported on the ground that they were exercising the right of private defence of property under ss. 97, 104, and 105 of the Penal Code.—*Shurufoddin v. Kassinath*, 13 W. R. 64. [*Loch and Hobhouse*, JJ. April 28, 1870.]

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Right of private defence against deadly assault when there is risk of harm to innocent person.

of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private

#### Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

## CHAPTER V.

### OF ABETMENT.

Abetment of a thing.

107. A person abets the doing of a thing, who—

*First.*—Instigates any person to do that thing; or,

*Secondly.*—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

*Thirdly.*—Intentionally aids, by any act or illegal omission, the doing of that thing.

*Explanation 1.*—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

#### Illustration.

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact, and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

\* The following chapters, namely, IV. (General Exceptions), V. (Abetment), and XXIII. (Attempts to commit Offences), apply to offences punishable under ss. 121A, 294A, and 304A; and Chaps. IV. and V. apply to offences punishable under ss. 124A and 225A.—Act XXVII. of 1870, s. 13.

*Explanation 2.*—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

**CHARGE.**—"The charge should have set forth that, as the prisoner was present abetting the abduction of Mussamut Bhoola with intent that she might be compelled to marry—against her will, he, under s. 114 of the Penal Code, committed the said abduction—an offence punishable under s. 366 of the Penal Code, and within," &c.—3 W. R. Cr. L. 9, No. 518 of 1865.

IN drawing up a charge of abetment, the section of the principal offence, and the section of this chapter (v) which the case covers, should be mentioned, with the circumstances which bring the offence under the particular section of this chapter.—1 W. R. Cr. L. 9; 2 W. R. Cr. L. 1, 8.

WHEN one person is accused of committing any offence, and another of abetment of such offence, they may be charged and tried together, or separately, as the Court thinks fit.—Crim. Pro. Code (Act X. of 1882), s. 239.

WHERE a person has given security to be of good behaviour, the abetment by him of any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.—Crim. Pro. Code (Act X. of 1882), s. 121.

A CHARGE of abetment may be enquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.—Crim. Pro. Code (Act X. of 1882), s. 180, *illus. a*.

PERSONS present and abetting a boy to set fire to the pile upon which a widow voluntarily burnt herself were guilty themselves of culpable homicide. One who took no active part in causing the death, but induced the widow to return to the pile, was guilty of abetment of suicide.—1 R. J. P. J. 174.

ABETMENT of the issue of a false certificate of summons. Although there was no chaukidar in the village of the name appearing on the receipt acknowledging due service, the prisoner was acquitted in the absence of proof of guilty knowledge or belief, it being probable that he (an utter stranger in the village) was deceived by the villagers.—Queen v. Hissamuddeen, 3 W. R. 37. [Kemp and Seton-Karr, JJ. June 27, 1863.]

THERE can be no conviction for abetment of murder without proof of murder. A husband, or those who aided him, cannot be convicted of kidnapping for taking away his own wife; but they are guilty of rioting if they carry out the husband's object of getting possession of his wife by force and violence and in the darkness of night.—Queen v. Askur and another, W. R. Sp. 12. [Steer and Seton-Karr, JJ. Feb. 22, 1864.]

PROOF of dishonest or fraudulent intent is necessary for a conviction under s. 496 of the Penal Code of falsely going through the ceremony of marriage. The mere act of allowing the marriage to take place at one's house does not amount to the abetment of an illegal marriage.—Queen v. Kudum and others, W. R. Sp. 13. [Steer and Morgan, JJ. Feb. 24, 1864.]

THE prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498 of the Penal Code, and for wrongful confinement of her under s. 343, *held* that both sentences could not stand, and that as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.—Queen v. Ishwar Chunder Jogi, W. R. Sp. 21. [Loch and Seton-Karr, JJ. April 12, 1864.]

WHEN two persons take an active part in a murder, they become principals in the first degree, though one of them only may have been the actual killer. If one stood by whilst the crime was being committed, he would be an abettor.—Queen v. Jan Mahomed and another, 1 W. R. 49. [Kemp and Glover, JJ. Dec. 26, 1864.]

THE conviction of a police-inspector for having abetted the bringing of a false charge of murder quashed, because it was not distinctly shown that he preferred the charge *malâ fide*.—Queen v. Muthoorapershad Panday and others, 2 W. R. 9. [Kemp and Glover, JJ. Jan. 18, 1865.]

A PERSON can be convicted of abetment of theft under the 1st explanation of s. 107 of the Penal Code only if he either procures or attempts to procure the commission of the theft. Mere subsequent knowledge of the offence is insufficient.—Queen v. Shumeeruddeen and others, 2 W. R. 40. [Kemp and Glover, JJ. Mar. 14, 1865.]



KNOWING of a design to commit a dacoity, and voluntarily concealing the existence of that design with the knowledge that such concealment would facilitate the commission of dacoity, does not amount to an abetment of the dacoity.—*Queen v. Jhugroo and others*, 4 W. R. 2. [Seton-Karr and Jackson, JJ. Sep. 4, 1865.]

To amount to the offence of extortion, property must be obtained by intentionally putting a person in fear of injury to that person, and thereby dishonestly inducing him to part with his property. The mere issue of a hukumnāma (to correct statistical information) by a police-officer is no legal ground for a conviction of abetment of cheating or of extortion.—*Queen v. Meajan and another*, 4 W. R. 5. [Kemp and Seton-Karr, JJ. Sep. 9, 1865.]

PERSONS punished as principals cannot also be punished for abetment of the same offence.—*Queen v. Jeetoo Chowdhry and others*, 4 W. R. 23. [Loch and Glover, JJ. Nov. 8, 1865.]

HELD that the prisoners could not be convicted of abetment of grievous hurt and of abetment of riot after having been convicted of both charges as principals. As, however, the evidence credited by the jury was held by the High Court to support a conviction of culpable homicide, and as the prisoners, even on their conviction on the lesser charge of grievous hurt, might have been sentenced to a much heavier punishment than had been passed on them, their punishment was not reduced.—*Queen v. Ramnarain Joshi and others*, 4 W. R. 37. [Kemp and Seton-Karr, JJ. Dec. 21, 1865.]

THE prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate on a charge of defamation. *Held* that this was abetment of giving false evidence in a stage of a judicial proceeding, and was triable before a Court of Session only.—*In re Andy Chetty*, 2 Mad. H. C. R. 438. [Frere and Innes, JJ. 1865.]

THE conviction of certain persons as abettors of culpable homicide in having looked on passively at a suttee was upheld on appeal. Campbell, J., in passing judgment in the case, made the following remarks: "The more important question remains behind—whether all persons in the position of the appellants are not, by the mere act of going to a suttee, and giving it, by their presence, their countenance and support, guilty of abetment of suttee, even though nothing more active can be proved against them. It would seem to be very dangerous to let it be supposed that, so long as it cannot be proved that a man brought the faggots or the fire, he may give the utmost moral and actual support to a suttee with impunity. Practically, I believe, spectators are most powerful abettors. . . . I am inclined to think that every man of education or intelligence who goes to a suttee, and stands an unopposing and passively supporting spectator, does, by every step towards the suttee, commit an act of abetment."—*Queen v. Jhoteo Singh and others*, 1 R. J. P. J. 246. The above ruling is contrary to the remarks of the Indian Law Commissioners on the Penal Code, and to the following cases: *Queen v. Gora Chand Gope*, 5 W. R. 45; *Queen v. Goburdhun Bera*, 6 W. R. 80; *Gopal Chunder Sirdar v. Foolmoni Bewa*, 1 L. R., 8 Cal. 728, S. C. 11 C. L. R. 223.

IN the case of *Queen v. Jhoteo Sing and others* (1 R. J. P. J. 246), it was held by Campbell and Kemp that persons who looked on passively at a suttee were rightly convicted of abetment of culpable homicide. But from the following remarks of Sir Barnes Peacock in another case it will be seen that a contrary and more sensible opinion was entertained: "If the object and design of those who seized Amoordee was merely to take him to the thana on a charge of theft, and it was not part of the common design to beat him, they would not all be liable for the consequence of the beating, merely because they were present. It is laid down that, when several persons are in company together, engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits any offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention. It is also said that although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who committed it, he will not be a felon, merely because he did not attempt to prevent it, or to apprehend the felon. But if several persons go out together for the purpose of apprehending a man and taking him to the thana on a charge of theft, and some of the party, in the presence of the others, beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on, without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties, and acting in concert, and that the beating was in furtherance of a common design. I do not know what the evidence was. All I wish to point out is, that all who are present do not necessarily assist by their presence every act that is done,

in their presence, nor are consequently liable to be punished as principals."—*Queen v. Gora Chand Gope and others*, 5 W. R. 45; B. L. R. Sup. Vol. 443; 1 Ind. Jur. N. S. 177; 1 Wyman's Rev., Civ., and Crim. Rep. 43. [Peacock, C.J., and Trevor and Norman, JJ. Mar. 3, 1866.]

WHERE a constable and others enter a house, and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others.—*Government v. Mahomed Hossein and others*, 5 W. R. 49. [Norman and Campbell, JJ. Mar. 5, 1866.]

How a Judge should charge the jury in a case of abetment, while present, of the forgery of a valuable document.—*Queen v. Jehan Baksh*, 5 W. R. 68. [Kemp and Seton-Karr, JJ. April 16, 1866.]

THE prisoners having abetted an assault, and murder having been committed, *held* under the peculiar circumstances of the case that they were guilty of abetment of grievous hurt, and not abetment of murder.—*Queen v. Goluck Chung and others*, 5 W. R. 75. [Campbell and Macpherson, JJ. April 28, 1866.]

HELD that it is not necessary in a case of extortion under the Penal Code that the threat should be used, and the property received, by one and the same individual, nor that the receiver should be charged with abetment, although that might be done.—*Reg. v. Shankar Bhagvat*, 2 Bom. H. C. R. 394. [Couch, C.J., and Warden, J. July 12, 1866.]

A MASTER is not criminally responsible for the wrongful act of a servant, unless he can be shewn to have expressly authorized it.—*Suffer Ally Khan v. Golam Hyder Khan and others*, 6 W. R. 60. [Norman and Seton-Karr, JJ. Aug. 27, 1866.]

HELD that the prisoners, having abetted the suicide, were rightly convicted by the Judge for that offence. The sentence was mitigated under the circumstances.—*Government v. Gopaul Singh and others*, 1 Agra H. C. R. 21. [Pearson and Turner, JJ., and Spankie, Offg. J. Sep. 10, 1866.]

A PERSON may be convicted of murder on his own confession. Where a master accompanies a servant, knowing the latter's intention to commit murder, and is present at the commission of the murder, although he struck no blow, still he is guilty as a principal, the only reasonable presumption being that both were acting with a common intent.—*Queen v. Hyder Joha*, 6 W. R. 83. [Kemp and Markby, JJ. Sep. 21, 1866.]

PRISONER was present at a murder without being aware that such an act was to be committed. Through fear he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. *Held* that he was guilty, not of abetment of murder, but causing the disappearance of evidence of a crime under s. 201 of the Penal Code.—*Queen v. Goburdhun Bera*, 6 W. R. 80. [Loch and Pundit, JJ. Oct. 4, 1866.]

In a case of bigamy and abetment of bigamy the High Court observed that the woman (who was the principal) and the two men (who were the abettors) should have been charged in separate heads of the charge, since the former was charged actually with bigamy, and the latter as principals of the second degree by reason of their having been present abetting the commission of that offence under s. 114 of the Penal Code.—5 W. R. Cr. L. 5, No. 243 of 1866.

WHERE several prisoners were all concerned in a case of torture, and were prosecuting a common object, each was held guilty as a principal, and not as an abettor of others.—*Queen v. Tarinee Churn Chuttopadhya and others*, 7 W. R. 3. [Kemp and Markby, JJ. Jan. 8, 1867.]

THREE persons, who put up a fourth to personate one whose authority was required to complete a conveyance of immoveable property, were held guilty under s. 94 of the Registration Act (XX. of 1866).—*Queen v. Soleemooddeen and others*, 7 W. R. 63. [Seton-Karr, J. May 6, 1867.]

WHERE C falsely represented himself to be U, and the writer of a document signed by U, and T, knowing that C was not U, and had not written such document, adduced C as U, and as the writer of that document, *held* that T ought to have been convicted on a charge of abetting the giving of false evidence.—*Queen v. Chundi Churn Nauth and another*, 8 W. R. 5. [Jackson and Hobhouse, JJ. June 4, 1867.]

UNDER s. 94, Act XX. of 1866, an abettor may be punished more severely than his principal can be.—*Queen v. Gopal Prosad Sein and others*, 8 W. R. 16. [Seton-Karr and Macpherson, JJ. June 15, 1867.]

A PRISONER who consented to form one of a party who committed theft, and resiled from his agreement, but was present at the commission of theft, does not come within cl. 2, s. 107, Penal Code, and ought not to have been convicted of the theft, but of the abetment thereof under cl. 3, s. 107, and s. 109, Penal Code, read together.—*Queen v. Boodhun Mooshur*, 8 W. R. 78. [Glover, J. Oct. 30, 1867.]

WHERE a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI. of 1867, filed a stamp-paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp-paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect, which was antedated, it was held that he was guilty of having abetted the commission of a forgery of a document within s. 463 and cl. 1, s. 464 of the Penal Code. The evidence of a prisoner taken by a Collector cannot be used against him on his trial before a Magistrate.—*Queen v. Sookhmoy Ghose*, 10 W. R. 23. [Loch and Glover, JJ. July 25, 1868.]

WHERE A intended to register a deed, but was too ill to do so, and B, who was known to A, personated A, and had the deed registered in her name, it was held that, in the absence of any thing to prove that it was intended to defraud any body, A was not guilty of cheating by personation under s. 419 of the Penal Code, but of an offence under s. 93 of the Registration Act (XX. of 1866). C and D, who abetted A, were convicted of an offence under s. 94 of the said Act XX.—*Revision of Proceedings in the Case of Loothy Bawa and others*, 11 W. R. 24; 2 B. L. R. A. Cr. 25. [Norman and Jackson, JJ. Mar. 31, 1869.]

WHERE, of several persons constituting an unlawful assembly, some only are armed with sticks, and A, one of them, is not so armed, but picks up a stick and uses it, B (the master of A), who gave a general order to beat, is guilty of abetting the assault made by A.—*Queen v. Rasookollah and others*, 12 W. R. 51. [Glover and Mitter, JJ. Sep. 2, 1869.]

HELD that where A gave a *dão* to B, who had given out his intention to coerce the party against whom he was acting, and who inflicted grievous hurt on such party with the *dão*, A was guilty of abetment within the second head of the third clause of s. 107 of the Penal Code.—*Queen v. Eshan Meah and another*, 12 W. R. 52. [Glover and Mitter, JJ. Sep. 3, 1869.]

To make a master criminally responsible for an offence committed by his servants, it must be shown that there has been some act or illegal omission on the part of the master whereby he abetted the offence, or some prior instigation or conspiracy. Evidence not admissible cannot be received as corroborative proof.—*Crown Prosecutor v. Shamsunder*, 1 N. W. P. 310. [Pearson and Turner, JJ. Sep. 3, 1869.]

AN omission to give information that a crime has been committed does not, under s. 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation. [See ss. 44 and 45 of the Criminal Procedure Code (Act X. of 1882).] —*Queen v. Khadim Sheikh*, 4 B. L. R. A. Cr. 7. [Loch and Glover, JJ. Nov. 23, 1869.]

THE substantive law applicable to a British-born subject tried in the High Court of Judicature at Bombay for destroying a British ship on the high seas, at a distance of more than three miles from the shores of British India, is the English law, and not the Penal Code, notwithstanding the provisions of Stat. 30 and 31 Vic., c. 124, s. 11. The same substantive law is applicable to prisoners who conspire together in Bombay to destroy such ship on the high seas, and such ship is so destroyed in consequence. The procedure applicable in such cases is the ordinary criminal procedure of the High Court. The question whether the Indian Legislature has power to legislate with reference to offences committed on the high seas considered. There is not any Act of the Indian Legislature now in force which provides for the offence of destroying a ship when committed at a greater distance than three miles from the coast, or for the abetment in British India of such an offence so committed.—*Reg. v. Elmstone, Whitwell, et al.*, 7 Bom. H. C. R. 89. [Westropp, Q.J., Bayley and Green, JJ. July 22, 30, 1870.]

EVIDENCE that a woman prepared herself to commit suicide in the presence of the accused, that they followed her to the pyre and stood by her, her step-sons crying, "Ram, Ram," and one of the accused admitting that he told the woman to say, "Ram, Ram," and she would become "suttee," proves active connivance and unequivocal countenance of the suicide by the accused, and justifies the inference that they had engaged with her in a conspiracy for the commission of the suttee.—*Reg. v. Mohit Pandey and others*, 3 N. W. P. 316. [Pearson, J. Sep. 6, 1871.]

THE Sessions Court at Patna was held to have jurisdiction to try the offence of abetment of waging war against the Queen, though the waging of war did not take place in Patna, the rule of law as to abetment being that, where parties concert together, and have a common object, the act of one of the parties, done in furtherance of the common object, and in pursuance of the concerted plan, is the act of the whole. The jurisdiction of the Sessions Court at Patna was not affected by the erroneous statement in the charge of the abetment having taken place at Calcutta, when the evidence was sufficient to show the abetment at Patna; such erroneous statement being an error or defect in the charge which is cured by s. 537 of the Code of Criminal Procedure, 1882.—*Queen v. Ameer Khan and others*, 17 W. R. 15; 9 B. L. R. 36. [Couch, C.J., and Jackson and Macpherson, JJ. Dec. 12, 1871.]

THE carrying off of certain buffaloes belonging to the complainant by order of the accused, and the retention of them in the custody of the latter's servant, were held to amount to an abetment of theft as defined in the Penal Code.—*Tarinee Prosaudd Banerjee and another, Petitioners*, 18 W. R. 8. [Kemp and Glover, JJ. June 14, 1872.]

THE lower Criminal Courts cannot punish, as abettors, persons who gave evidence in support of false charges, or rather charges found by such Courts to be false. S. 108 of the Penal Code does not contemplate any acts of subsequent abetment, or provide for the punishment of such offences, except when they are such as are defined in ss. 212 to 218.—*Queen v. Paun Pandah and another*, 18 W. R. 28; 9 B. L. R. Ap. 16. [Kemp and Glover, JJ. July 11, 1872.]

IT is not necessary to constitute the offence of abetment that the act abetted should be committed.—Reference in the Case of Dinonath Burooa and others, 18 W. R. 32. [Kemp and Glover, JJ. July 24, 1872.]

S. 30 of the Evidence Act (I. of 1872) ought to be considered with great strictness, and the confession of one person is not admissible in evidence against another, although the two are jointly tried, if one is tried for the abetment of the offence for which the other is on his trial.—*Queen v. Jaffer Ali*, 19 W. R. 57. [Kemp and Glover, JJ. April 17, 1873.]

IN order to convict a person of abetting the commission of a crime, it is not only necessary to prove that he has taken part in those steps of the transaction which are innocent, but in some way or other it is absolutely necessary to connect him with those steps of the transaction which are criminal. There can be no offence of the abetment of giving false evidence unless the person charged with abetment intended not only that the statement should be made, but intended that the statement should be made falsely.—*Queen v. Nim Chand Mookerjee and another*, 20 W. R. 41. [Markby and Birch, JJ. June 27, 1873.]

WHERE a foreign subject, resident in foreign territory, instigated the commission of an offence which, in consequence, was committed in British territory, *held* that the instigation not having taken place in any district created by the Code of Criminal Procedure, the instigator was not amenable to the jurisdiction of a British Court established under that Code, s. 66.—*Reg. v. Pirtai*, 10 Bom. H. C. R. 356. [Melvill and West, JJ. July 19, 1873.]

THE Magistrate convicted accused of abetting the giving of false evidence in a judicial case proceeding before himself. *Held* that, as by the proceedings of 24th March 1873, the Magistrate could not have tried the person who gave false evidence, he could not try the abettor.—*Pro.*, Nov. 6, 1873, 7 Mad. H. C. R. Ap. 28.

THE offence of abetment by instigation depends upon the act which is actually done by the person whom he abets.—*Queen v. Imamdi Bhooyah*, 21 W. R. 8. [Phear and Morris, JJ. Dec. 1, 1873.]

WHERE a head-constable, who knew that certain persons were likely to be tortured for the purpose of extorting confession, purposely kept out of the way, it was held that he was guilty of abetment under the words of s. 107 of the Penal Code, expl. 2.—*Queen v. Kulee Churn Gangooly*, 21 W. R. 11. [Markby and Birch, JJ. Dec. 4, 1873.]

S was charged with the preparation of a certain record, and was in the habit of preparing it from certain abstracts made and read to him by D. D made and read false abstracts, whereby an incorrect record was prepared. The Court was of opinion that D could not strictly be held to have committed the offence described in s. 218 of the Penal Code. He was guilty, however, of abetment of the offence described in that section, and not the less so that S had no guilty knowledge or intention in the matter.—*Queen v. Brij Mohan Lal*, 7 N. W. P. 134. [Pearson, J. Jan. 25, 1875.]

IF a number of persons, assembled for any lawful purpose, suddenly quarrel with an intruder without any previous intention or design, they do not commit "riot" in the legal sense of the word. To prove abetment under s. 107, Penal Code, by "illegal omission," it would be necessary to show that the accused intentionally aided the commission of the offence by his non-interference.—*Khajah Noorul Hossein alias Khajuk Waheed Jan v. Fabre-Tonnerre*, 24 W. R. 26. [Glover and Mitter, J.J. July 12, 1875.]

THE offence of abetment under the Penal Code is a substantive offence. The conviction of an abettor is, therefore, in no way dependent on the conviction of the principal.—*Reg. v. Maruti Dada*, I. L. R., 1 Bom. 15. [West and Nánabái Haridás, J.J. Oct. 12, 1875.]

M INSTIGATED Z to personate C, and to purchase in G's name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding. *Held* that the offence of fabricating false evidence had been actually committed, and that M was properly convicted of abetting the commission of such offence. *Queen v. Ramsaran Chowbey* (4 N. W. P. 46) distinguished and observed on.—*Empress v. Mula*, I. L. R., 2 All. 105. [Turner, J. Jan. 24, 1879.]

THE supplying of food to a person about to commit a crime is not necessarily an abetment of the crime; but if food were supplied in order that the criminal might go on a journey to the intended scene of the crime, or conceal himself while waiting for an opportunity to commit the crime, the supply of food would be in order to facilitate the commission of the crime, and might facilitate it.—*In re Lingam Ramauna*, I. L. R., 2 Mad. 137. [Turner, C.J., and Muttusámi Ayyar, J.J. May 3, 1880.]

A HINDU, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family he lived in commensality with it, but he did not treat such property as joint family property, but as his own property. *Held* that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted of theft in respect of it. It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property.—*Empress v. Sita Ram Rai*, I. L. R., 3 All. 181. [Straight, J. Aug. 16, 1880.]

TO PREPARE, in conjunction with others, a copy of an intended false document, and to buy a stamped paper for the purpose of writing such false document, and to ask for information as to a fact to be inserted in such false document, do not constitute forgery, nor an attempt to commit forgery under the Penal Code, but are facts which would support a conviction for abetment of forgery as being acts done to facilitate the commission of the offence.—*Reg. v. Pádala Venkatasámi*, I. L. R., 3 Mad. 4. [Turner, C.J., and Kindersley, J. Mar. 8, 1881.]

THE mere fact that the offence of extortion under s. 384 of the Penal Code is committed in the presence of the village-chaukidar, without eliciting any disapproval on his part, will not render him liable as an abettor of the offence.—*In the Matter of the Petition of Gopal Chunder Sirdar*; *Gopal Chunder Sirdar v. Foolmoni Bewa*, I. L. R., 8 Cal. 728; 11 C. L. R. 223. [McDonell and Field, J.J. April 20, 1882.]

A EXECUTED to B on plain paper an instrument which should have been executed on a paper bearing a four-anna stamp. B filed a suit against A in the Civil Court, and produced the instrument in evidence. The Civil Court called upon A to pay the duty and penalty, and, on B's refusal to pay, impounded the instrument, and sent it to the Collector. The Collector, concurring with the opinion of the Civil Court, sanctioned the prosecution, in the Criminal Court, of both A and B, but without requiring the payment of the duty and penalty. The prosecution resulted in the conviction of A under s. 61 of the Stamp Act (I. of 1879), and of B of abetment of A's offence. *Held* that the convictions were illegal, inasmuch as the Collector failed to allow an opportunity of paying the duty and penalty. *Held* further that mere receipt of an unstamped instrument did not constitute the offence of an abetment of the execution of such an instrument.—*Empress v. Janki*, I. L. R., 7 Bom. 82. [West and Pinhey, J.J. Nov. 2, 1882.]

K, KNOWING that he was suffering from cholera, entered a train as a passenger without informing the Railway Company's servants of his condition. M, knowing of K's condition, bought K's ticket, and travelled with him. *Held* that K was properly convicted under s. 269 of the Penal Code of negligently doing an act which was, and which he had

reason to believe was, likely to spread infection of a disease dangerous to life, and M of abetment of K's offence.—*Queen-Empress v. Krishnappa*, I. L. R., 7 Mad. 276. [Turner, C.J., and Kernan, J. Dec. 14, 1883.]

A DEBTOR, having paid a sum of money to his creditor, accepted from the latter an unstamped receipt, promising to affix a stamp thereto. *Held* that this did not constitute abetment, within the meaning of s. 107 of the Penal Code, of the offence of making an unstamped receipt. *Empress v. Bahadur Singh* (Weekly Notes, 1885, p. 30) distinguished. *Empress v. Janki* (I. L. R., 7 Bom. 82) and *Empress v. Bhairon* (Weekly Notes, 1884, p. 37) referred to.—*Queen-Empress v. Mitthu Lal*, I. L. R., 8 All. 18. [Petheram, C.J. Oct. 26, 1885.]

MERE non-feasance will not generally amount to an illegal omission (1 Russ. 91); but circumstances may exist where mere non-feasance towards a child of tender years amounts to an illegal omission. So a refusal or neglect to provide sufficient food or other necessities for an infant of tender years, unable to provide for or take care of itself, by a party obliged by duty or contract to provide for it, amounts to an illegal omission.—1 Russ. 80.

**108.** A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence, with the same intention or knowledge as that of the abettor.

*Explanation 1.*—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

*Explanation 2.*—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

#### *Illustrations.*

(a.) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(b.) A instigates B to murder D. B, in pursuance of the instigation, stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

*Explanation 3.*—It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

#### *Illustrations.*

(a.) A, with a guilty intention, abets a child or a lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(b.) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence, and had committed murder, and he is therefore subject to the punishment of death.

(c.) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(d.) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

*Explanation 4.*—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

*Illustration.*

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

*Explanation 5.*—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

*Illustration.*

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

S. 108 of the Penal Code does not contemplate any acts of subsequent abetment, or provide for the punishment of such offences, except when they are such as are defined in ss. 212 to 218.—*Queen v. Paun Pundah and another*, 18 W. R. 28; 9 B. L. R. Ap. 16. [Kemp and Glover, JJ. July 11, 1872.]

UNDER expl. 5, s. 108, of the Penal Code, it is not necessary to the commission of the offence of abetment by conspiracy that the abettor shall concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.—*Queen v. Gobind Dohay and others*, 21 W. R. 35. [Kemp and Glover, JJ. Jan. 27, 1874.]

A SOUGHT the aid of B with the intention of committing a theft of the property of B's master. B, with the knowledge and consent of his master, and for the purpose of procuring A's punishment, aided A in carrying out his object. On the prosecution of A for theft, *held* that, as the property removed was so taken with the knowledge of the owner, the offence of theft had not been committed; *held* further that it is not necessary to an indictment for the abetment of an abetment of an offence to show that such offence was actually committed.—*Empress v. Troyluckho Nath Chowdhry*, 1 L. R., 4 Cal. 366; 3 C. L. R. 525. [Jackson and White, JJ. Nov. 12, 1878.]

Court by which offence abetted is triable. Cog. if for offence abetted cog. According as warrant or summons may issue for

**109.** Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

*Explanation.*—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

*Illustrations.*

(a.) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in s. 161.

(b.) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c.) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison, and delivers it to B, in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence, and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

offence abetted.

According as offence abetted is bailable or not.

According as offence abetted is compoundable or not.

S. 109 of the Penal Code contemplates that the act abetted should be committed in consequence of the abetment. The term "fabrication" in s. 193 refers to the fabrication of false documentary evidence to be used in a suit, so that to convict under this section it is essential to aver and to prove that the fabricated documents were intended for that purpose. The illegal concealment, by act or omission, contemplated by s. 120 of the Code, has reference to the existence of a design on the part of third persons to fabricate evidence.—Queen v. Rajcoomar Banerjee, Ind. Jur. O. S. 105. [Trevor and Seton-Karr, JJ. Sep. 27, 1862.]

ABETMENT of the issue of a false certificate of summons. Although there was no *chaukidar* in the village of the name appearing on the receipt acknowledging due service, the prisoner was acquitted in the absence of proof of guilty knowledge or belief, it being probable that he (an utter stranger in the village) was deceived by the villagers.—Queen v. Hissamuddeen, 3 W. R. 37. [Kemp and Seton-Karr, JJ. June 27, 1863.]

THE prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498 of the Penal Code, and for wrongful confinement of her under s. 343, *held* that both sentences could not stand, and that as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.—Queen v. Ishwar Chunder Jogi, W. R. Sp. 21. [Loch and Seton-Karr, JJ. April 12, 1864.]

WHERE a person represented a girl to be the daughter of one woman when she was within his knowledge the daughter of another woman, *held* that he was guilty of cheating by personation under s. 416 of the Penal Code, and that it was unnecessary to bring in s. 109 relating to abetment.—Queen v. Dhanput Ojha, 7 W. R. 51. [Glover, J. April 5, 1867.]

WHERE A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured as to have died in consequence, *held* that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—Queen v. Doorgessur Surmah, 7 W. R. 61. [Hobhouse, J. April 30, 1867.]

UNDER s. 94, Act XX. of 1866, an abettor may be punished more severely than his principal can be.—Queen v. Gopal Prosad Sein and others, 8 W. R. 16. [Seton-Karr and Macpherson, JJ. June 15, 1867.]

A PRISONER who consented to form one of a party who committed theft, and resiled from his agreement, but was present at the commission of theft, does not come within cl. 2, s. 107, Penal Code, and ought not to have been convicted of the theft, but of the abetment thereof under cl. 3, s. 107, and s. 109, Penal Code, read together.—Queen v. Boodhun Mooshur, 8 W. R. 78. [Glover, J. Oct. 30, 1867.]

THE carrying off of certain buffaloes belonging to the complainant by order of the accused, and the retention of them in the custody of the latter's servant, were held to amount to an abetment of theft as defined in the Penal Code.—Tarinee Prosad Banerjee and another, Petitioners, 18 W. R. 8. [Kemp and Glover, JJ. June 14, 1872.]

IT is not necessary to constitute the offence of abetment that the act abetted should be committed.—Reference in the Case of Dinonath Burooa and others, 18 W. R. 32. [Kemp and Glover, JJ. July 24, 1872.]

THE elder paternal uncle of a Mahomedan girl, a minor, disposed of her in marriage, after he knew she had previously been given in lawful marriage by his younger brother. *Held* that the act did not, *per se*, constitute a criminal offence, even though the second



marriage were valid, it appearing that the accused was the only person concerned in the second marriage who knew of the first, and that the girl was not present. A and B were indicted under ss. 109 and 495 of the Penal Code—A for giving his niece (a minor) in marriage, she being then married, and B for aiding therein. The girl was not present at the marriage, and there was no evidence to show A had conspired with any person but B, whom the jury acquitted. *Held* that the acquittal of B involved the acquittal of A.—In the Matter of Abdool Kurreem v. Empress, 3 C. L. R. 81; 1. L. R., 4 Cal. 10. [White and Prinsep, JJ. July 19, 1878.]

M INSTIGATED Z to personate C, and to purchase in C's name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding. *Held* that the offence of fabricating false evidence had been actually committed, and that M was properly convicted of abetting the commission of such offence. Queen v. Ramsaran Chowbey (4 N. W. P. 46) distinguished and observed on.—Empress v. Mula, 1. L. R., 2 All. 105. [Turner, J. Jan. 24, 1879.]

A MEMBER of the caste of Ajanyá Rájput Guzars, residing in Khándesh, executed a deed of divorce to his wife. The Court held on the evidence that the deed was proved, and that in this caste a husband was, for a sufficient reason, such as incontinence, allowed to divorce his wife; that the deed in the present case had not been executed for a sufficient reason, and that, consequently, the parties entering into a second marriage were guilty of an offence under s. 494 of the Penal Code; and that the priest who officiated at that marriage was an abettor under ss. 494 and 109. Mere consent of persons to be present at an illegal marriage, or their presence in pursuance of such consent, or the grant of accommodation in a house for the marriage, does not necessarily constitute abetment of such marriage.—Empress v. Umi, 1. L. R., 6 Bom. 126. [Melvill and Kemball, JJ. Jan. 11, 1882.]

A MOTHER cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily the custody of the mother is the custody of the father, and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. But where a Hindu woman left her husband's house, taking with her her infant daughter, and went to the house of A, and on the same day the daughter was married to B, the brother of A, without the father's consent, it was held that A was rightly convicted under ss. 109 and 363 of the Penal Code of abetting the offence of kidnapping.—In the Matter of the Petition of Pran Krishna Surma: Empress v. Pran Krishna Surma, 1. L. R., 8 Cal. 969; 10 C. L. R. 6. [Wilson and Macpherson, JJ. June 20, 1882.]

**110.** Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor and with no other.

**111.** When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it; provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

#### Illustrations.

(a.) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the food of Y.

The following notes equally apply to ss. 110 and 111: Court by which offence abetted is triable. Cog. if for offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not. According as offence abetted is compoundable or not.

Punishment of abetment if person abetted does act with different intention from that of abettor.

Liability of abettor when one act abetted and different act done.

Proviso.

(b.) A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(c.) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and, being resisted by Z, one of the inmates, murder Z. Here, if the murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

THE prisoners having abetted an assault, and murder having been committed, it was held, under the peculiar circumstances of the case, that they were guilty of grievous hurt, but not of abetment of murder.—*Queen v. Goluck Chung and others*, 5 W. R. 75. [Campbell and Macpherson, JJ. April 28, 1866.]

WHERE A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured as to have died in consequence, *held* that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—*Queen v. Doorgessur Surmah*, 7 W. R. 61. [Hobhouse, J. April 30, 1867.]

M and C were proved to have connived at a robbery in which excessive violence was used, resulting in the death of the persons robbed. The Sessions Judge convicted M and C of abetment of murder, on the ground that the death was "a probable consequence of the intention known and abetted" by them. *Held* that the test of guilt in charges of abetment must always be whether, having regard to the immediate object of the instigation or conspiracy, the act done by the principal is one which, according to ordinary experience and common sense, the abettor must have foreseen as probable; and that, having regard both to the strictness of the tests which should be applied to the interpretation of a penal statute, and especially of a section such as s. 111 of the Penal Code, and also to the necessary difficulty of questions as to the state of a man's mind at a particular moment, it could not, in the present case, be said that, because the accused knew of, and connived at, the intended robbery, they must be presumed to have foreseen that such excessive violence as was used was probable.—*Empress v. Mathura Das*, 1 L. R., 6 All. 491. [Straight, Offg. C.J. June 27, 1884.]

**112.** If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

#### *Illustration.*

A instigates B to resist by force a distress made by a public servant. B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment for both these offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

A ENTERED the house of B without the latter's permission, and committed adultery with B's wife. *Held* that A could be separately convicted of and punished for both the adultery and house-trespass, as they were distinct offences; but that under the circumstances B's wife was by law incapable of committing abetment of the house-trespass.—*Crown v. Sheikh Mungli*, Panj. Rec., No. 5 of 1871.

**113.** When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the effect caused.

*Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.*

*Court by which offence abetted is triable.*

*Cog. if for offence abetted cog.*

According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not. According as offence abetted is compoundable or not.

caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect; provided he knew that the act abetted was likely to cause that effect.

*Illustration.*

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence. Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

WHERE A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured that he died, it was held that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—*Queen v. Doorgessur Surmah*, 7 W. R. 97. [Hobhouse, J. April 30, 1867].

Ditto.

114. Whenever any person who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

PRISONER was present at a murder without being aware that such an act was to be committed. Through fear he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. *Held* that he was guilty, not of abetment of murder, but of causing the disappearance of evidence of a crime under s. 201, Penal Code.—*Reg. v. Goburdhun Bera*, 6 W. R. 80. [Loch and Pundit, JJ. Oct. 4, 1866.]

WHEN a prisoner kept watch at a door while a murder was being committed inside, he should be charged under s. 114 (and not under s. 109) of the Penal Code, for it could hardly be said that the murder took place in consequence of such abetment.—6 W. R. Cr. L. 4, No. 1410 of 1866.

WHERE several prisoners were all concerned in a case of torture, and were prosecuting a common object, each was held guilty as a principal, and not as an abettor of others.—*Queen v. Tarinee Churn Chuttopadhya and others*, 7 W. R. 3. [Kemp and Markby, JJ. Jan. 3, 1867.]

IN order to bring a prisoner within s. 114 of the Penal Code, it is necessary first to make out the circumstances which constitute abetment, so that, "if absent," he would have been "liable to be punished as an abettor," and then to show that he was also present when the offence was committed.—*Queen v. Mussamat Niruni and another*, 7 W. R. 49. [Jackson and Glover, JJ. Mar. 28, 1867.]

WHERE a Court finds that parties came with a number of armed men, and carried off a crop, the finding amounts to that of a forcible carrying off without the consent of the owner. Even if they took no part in the actual taking, they must, with reference to s. 114, Penal Code, be considered guilty of the substantive offence under s. 378.—*Queen v. Shib Chunder Mundle and another*, 8 W. R. 59. [Kemp and Glover, JJ. Aug. 5, 1867.]

ACCORDING to s. 114 of the Penal Code, if the nature of the act constitutes abetment, the abettor, if present, is to be deemed to have committed the offence, though in point of fact another actually committed it. S. 114 of the Penal Code simply provides for the punishment of what the English law calls principals in the second degree. A person present, abetting an offence, is to be deemed to have committed the offence, though he does not, in fact, do so any more than a principal in the second degree does. Hence, "all who are present aiding and assisting a man to commit a rape are principal offenders in the second degree, whether they be men or women" (1 Russ. 905); and hence Lord Audley (3 Howell's State Trials 401) was convicted as a principal of a rape on his own wife, because he aided another to ravish her. There are several modes of abetment defined in the Penal Code. One is, instigating another to commit an offence. If A instigates B to murder Z, he commits abetment; if absent, he is punishable as an abettor; and if the

offence is committed, then under s. 109; if present, he is, by s. 114, to be *deemed* to have committed the offence, and is punishable as a principal. Another mode of abetment is by intentionally aiding, by any act or illegal omission, the doing of an offence. A aids B to murder Z; if absent, he is punishable as an abettor, and may be liable under s. 109; if present, then he is to be *deemed* as much to have committed the offence as if he had struck the fatal blow. The meaning of s. 114 is that, if the nature of the act done constitutes abetment, then, if present, the abettor is to be deemed to have committed the offence, though in point of fact another actually committed it.—*Pro.*, Mar. 8, 1869, 4 Mad. H. C. R. Ap. 37.

A YOUNG Brahman widow was confined of a child. The chief constable of police, acting, as he stated, on information that the accused was about to kill a baby, went to search her house with a number of men, and found her lying on the first floor, and discovered on the second floor a living new-born child wrapped up in a cloth with a cooking pot turned over it. The Sessions Judge convicted the accused of attempt to murder. The High Court on appeal reversed the conviction, on the ground that the evidence was insufficient to support it. It was also held in this case that the chief constable's statement, that he "had information that the accused was about to kill the baby," was most improperly admitted as evidence against the accused. Action of the police censured. When a person abets the commission of an offence, and is present at the time when it is committed, he should be tried, under s. 114 of the Penal Code, for the same offence as the principal.—*Reg. v. Chima*, 8 Bom. H. C. R. 164. [Gibbs and West, JJ. July 6, 1871.]

S. 114 (and not s. 149) was held to apply to a case where, upon a charge of mischief by fire, the prisoner admitted that he was an abettor, and that he was present at the time the offence was committed.—*Queen v. Peer Mahomed*, 17 W. R. 52. [Couch, C.J., and Ainslie, J. April 17, 1872.]

WHERE, by direction of Government, the Magistrate promulgated an order under s. 62, Code of Criminal Procedure, directing all persons to abstain from hook-swinging or other self-torture in public, and from the abetment thereof, and no such order was upon the record, the High Court annulled the conviction of the prisoners by the Deputy Magistrate under ss. 188, 114, Penal Code, for having knowingly disobeyed that order.—*Dwarick Misser and others, Petitioners*, 18 W. R. 80. [Kemp and Glover, JJ. July 19, 1872.]

If an abettor of a crime is, on account of his presence at its commission, to be charged under s. 114 of the Penal Code as principal, his abetment must continue down to the time of the commission of the offence. If he distinctly withdraws at any moment before the final act is done, the offence is not committed with his continuing abetment.—*Reg. v. Amirtá Govindá*, 10 Bom. H. C. R. 497. [West and Nánábhái Haridás, JJ. Dec. 17, 1873.]

## 115. Whoever abets the commission of an offence punishable with death

Abetment of offence punishable with death or transportation for life, if offence not committed.

with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if any act for which the

If act causing harm be done in consequence.

abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

or transportation for life shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished

the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the

and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

### Illustration.

A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

Court by which offence abetted is triable. Cog. if for offence abetted cog. According as warrant or summons may issue for offence abetted. Not bailable. According as offence abetted is compoundable or not.

Court by which offence abetted is triable. Cog. if for offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not. According as offence abetted is compoundable or not.

**116.** Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment be punished with imprisonment of any description provided for that offence, for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both; and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

*Illustrations.*

- (a.) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.
- (b.) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.
- (c.) A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.
- (d.) B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

CASE of offering a bribe to a juryman. Although what passed between the prisoner and the juryman might not have amounted to an offer of a bribe to the latter, yet it was held to be so when taken in connection with what passed between the prisoner and the juryman's brother.—*Queen v. Bawool Chunder Biswas*, 1 W. R. 36. [Kemp and Glover, JJ. Dec. 7, 1864.]

THE conviction of a procuress changed from abduction to enticing, the woman alleged to have been abducted having been of mature age and a free agent. The conviction of the other prisoners also changed from abetting wrongful concealment under s. 368 of the Penal Code to abetment under s. 116.—*Queen v. Srimotee Poddee and others*, 1 W. R. 45. [Kemp and Glover, JJ. Dec. 16, 1864.]

THE prisoner asked a witness to suppress certain facts in giving his evidence against the prisoner before the Deputy Magistrate on a charge of defamation. Held that this was abetment of giving false evidence in a stage of a judicial proceeding, and was triable before a Court of Session only.—*In re Andy Chetty*, 2 Mad. H. C. R. 438. [Frere and Innes, JJ. 1865.]

WHERE a constable and others enter a house, and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others.—*Government v. Mahomed Hossein and others*, 5 W. R. 49. [Norman and Campbell, JJ. Mar. 5, 1866.]

A POLICE Magistrate has power to convict summarily, under Act IV. of 1866 (B.C.), s. 26, for an offence punishable under s. 116 of the Penal Code.—*Queen v. Mahbub Khan*, 1 B. L. R. O. Cr. 39. [Norman, J. Aug. 12, 1868.]

WHERE the accused was charged under s. 116, Penal Code, with having abetted the commission of an offence punishable under s. 161 of that Code, the person abetted having been a Civil Surgeon of a Sadr Station, it was held that the enhanced imprisonment prescribed by the latter part of s. 116 could not be awarded, as the Civil Surgeon was not a

public servant within the words of the section, "whose duty it is to prevent the commission of such offence."—*Queen v. Ramnath Surma Biswas*, 21 W. R. 9. [Phear and Morris, JJ. Nov. 18, 1878.]

ACCUSED was convicted by the Magistrate of abetting the kidnapping of a minor. Accused, knowing that the minor had left home without the consent of his parents, and at the instigation of one Komaren, the actual kidnapper, undertook to convey the minor to Kandy in Ceylon, and was arrested on the way thither. The Sessions Judge reversed the conviction on the ground that there was no concert between the accused and Komaren previous to the completion of the kidnapping by the latter. *Held* by the High Court that, so long as the process of taking the minor out of the keeping of his lawful guardian continued, the offence of kidnapping might be abetted, and that, in the present case, the conviction should be of an offence punishable under ss. 363 and 116 of the Penal Code.—*Reg. v. Samia Kaundan*, 1 L. R., 1 Mad. 173. [Morgan, C.J., and Innes, J. Dec. 5, 1876.]

**117. Whoever abets the commission of an offence by the public Court by**  
 Abetting the commission generally, or by any number or class of persons which offence  
 of an offence by the public, exceeding ten, shall be punished with imprisonment of either description for a term which may abetted is tri-  
 or by more than ten persons. extend to three years, or with fine, or with both. Cog. if for of-  
 fence abetted  
 Cog.

*Illustration.*

A affixes in a public place a placard, instigating a sect consisting of more than ten members to meet at a certain time and place for the purpose of attacking the members of an adverse set while engaged in a procession. A has committed the offence defined in this section.

IN A reference to the High Court the question was, whether an abetment of breach of contract by more than 10 persons was an abetment of the nature meant in s. 114 of the Penal Code. The reply of the High Court was as follows: "The prisoners in this case appear to have abetted 12 coolies in breaking their several contracts; and the Court's opinion is requested whether, inasmuch as 12 exceeds 10, this is an abetment under s. 117, which, it is presumed, is the section intended, and not s. 114. The Court are of opinion that the offence described is not an abetment under s. 117, Penal Code. The offence abetted must have been committed by more than 10 persons; whereas in the case under reference each breach of contract is a separate offence under s. 492 by each coolie, so that an abetment of such breach cannot be punished under s. 117, notwithstanding that more than 10 coolies broke contracts in consequence of such abetment.—3 W. R. Cr. L. 24, No. 821 of 1865.

**118. Whoever, intending to facilitate, or knowing it to be likely Court by**  
 Concealing a design to that he will thereby facilitate, the commission of which offence  
 commit an offence. an offence punishable with death or transporta- abetted is tri-  
 Punishable with death or tion for life, voluntarily conceals, by any act or Cog. if for of-  
 transportation for life— illegal omission, the existence of a design to fence abetted  
 commit such offence, or makes any representation which he knows to be Cog.  
 If offence committed : be committed, be punished with imprisonment According as  
 of either description for a term which may extend to seven years; or, if warrant or  
 If not committed. the offence be not committed, with imprison- may issue for  
 ment of either description for a term which may offence abet-  
 extend to three years; and in either case shall also be liable to fine. Not bailable.  
 According as  
 offence abet-  
 ted is com-  
 poundable or  
 not.

*Illustration.*

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

KNOWING of a design to commit a dacoity, and voluntarily concealing the existence of that design with the knowledge that such concealment would facilitate the commission of dacoity, does not amount to an abetment of the dacoity.—*Queen v. Jhugroo and others*, 4 W. R. 2. [Seton-Karr and Jackson, J.J. Sep. 4, 1865.]

HELD that the prisoner could not be punished under s. 118, as there was no omission of an act which he was bound to perform which facilitated the commission of an offence, but that he should be convicted under s. 176, Penal Code, as he was bound to report under s. 44, Code of Criminal Procedure, 1882, after he was informed of the robbery.—*Government v. Kesree*, 1 Agra H. C. R. 37. [Turner, J., and Spankie, Offg. J. Dec. 21, 1866.]

IN Madras four prisoners were indicted for, and convicted of, murder; and the fifth prisoner, who was the wife of the murdered man, was tried for, and convicted of, an offence under s. 118 of the Penal Code. The High Court upheld the conviction, as there was evidence to show that the woman knew of the design to murder her husband, and concealed it from him.—*Referred Case 30 of 1868*.

Court by which offence abetted is triable. Cog. if for offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not. According as offence abetted is compoundable or not.

**119.** Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence the commission of which it is his duty as such public servant to prevent, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of any description provided for the offence for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both; or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years;\* or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.†

#### Illustration.

A, an officer of police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has, by an illegal omission, concealed the existence of B's design, and is liable to punishment according to the provision of this section.

Ditto.

**120.** Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall, if the offence be committed, be punished with imprisonment of the description provided for the offence,

\* Court by which offence abetted is triable. Cog. if for offence abetted cog. According as warrant or summons may issue for offence abetted. Not bailable. According as offence abetted is compoundable or not.

† Court by which offence abetted is triable. Cog. if for offence abetted cog. According as warrant or summons may issue for offence abetted. According as offence abetted is bailable or not. According as offence abetted is compoundable or not.

for a term which may extend to one-fourth, and if the offence be not committed, to one-eighth, of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

S. 109 of the Penal Code contemplates that the act abetted should be committed in consequence of the abetment. The term "fabrication" in s. 193 refers to the fabrication of false documentary evidence to be used in a suit, so that to convict under this section it is essential to aver and to prove that the fabricated documents were intended for that purpose. The illegal concealment by act or omission, contemplated by s. 120 of the Code, has reference to the existence of a design on the part of third persons to fabricate evidence.—*Queen v. Raj Coomar Banerjee*, Ind. Jur. O. S. 104. [Trevor and Seton-Karr, J.J. Sep. 27, 1862.]

## CHAPTER VI.

### OF OFFENCES AGAINST THE STATE.

121. Whoever wages war against the Queen, or attempts to wage such

Waging or attempting to wage war, or abetting waging of war, against Queen.

war, or abets the waging of such war, shall be punished with death or transportation for life, and shall forfeit all his property.

Ct. of Ses.  
Uncog.  
Warrant.  
Not bailable.  
Not comp.

#### Illustrations.

(a.) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(b.) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

CHARGE.—That you, on or about the      day of      at      , waged war against Her Majesty the Queen-Empress of India, and thereby committed an offence punishable under s. 121 of the Indian Penal Code, and within the cognizance of the Court of Session [when the charge is framed by a Presidency Magistrate, for Court of Session substitute High Court.] And I hereby direct that you be tried by the said Court on the said charge.

THE special limitation of the period for prosecution (three years) in cases of treason and misprison of treason under Stat. 7 Wm. III., c. 3, s. 5, is an exception to the general rule in criminal cases; and, in enacting s. 121 of the Penal Code, the Legislature has not thought fit to limit in any way the period within which a prosecution for an offence against that enactment may be commenced, and consequently such limitation does not form part of the Penal Code. In a case in which the accused was charged with abetting the waging of war against the Queen under s. 121 of the Penal Code, it was held that the *Calcutta Gazette* and the *Gazette of India* were admissible in evidence, under s. 8 of Act II. of 1855, to prove the proclamation and official communications of the Government relating to the war. A printed official letter from the Secretary of the Government of the Panjáb to the Secretary of the Government of India was held to be admissible in evidence under s. 6, Act II. of 1855. S. 200 relates only to the oral evidence of witnesses. As to documentary evidence, although a prisoner has a right to have all or any part of any document used on his trial translated or interpreted to him, yet where a document is put in for the purpose of merely giving formal proof of that which is an incontestable fact, it is not necessary to interpret it at length. It would be sufficient if the prisoner was made to understand what the document was, and for what purpose it was used. *Quare*, whether with reference to s. 28 of Act II. of 1855, a prisoner charged with treason can be convicted on the evidence of a single witness?—*Queen v. Ameeroodeen, Appellant*, 15 W. R. 25; 7 B. L. R. 63. [Norman, Offg. C.J., and Bayley, J. Feb. 25, 1871.]

THE proceedings before a Magistrate preliminary to commitment are not impeachable for irregularity, because some of the depositions were taken before the accused persons were brought before him. The Sessions Court at Patna was held to have jurisdiction to try the offence of abetment of waging war against the Queen, though the waging of war did not take place in Patna, the rule of law as to abetment being that, where parties concert together, and have a common object, the act of one of the parties, done in further-



ance of the common object, and in pursuance of the concerted plan, is the act of the whole. The jurisdiction of the Sessions Court at Patna was not affected by the erroneous statement in the charge of the abetment having taken place at Calcutta, when the evidence was sufficient to show the abetment at Patna; such erroneous statement being an error or defect in the charge which is cured by s. 426 of the Code of Criminal Procedure. The issue of a warrant of commitment by the Governor-General in Council, under Reg. III. of 1818, cannot be treated in the nature of a conviction of the person so placed under personal restraint, so as to give immunity to the person so committed, and afterwards discharged from all political offences committed before that period, on the ground that he has already been tried, convicted, and punished. The rule of evidence that letters found in the house of a person after his arrest, and whilst in custody, cannot be used in evidence, is subject to the exception that the existence of the letters found may be established either by direct proof or by strong presumptive evidence.—*Queen v. Ameer Khan and others*, 17 W. R. 15; 9 B. L. R. 36. [Couch, C.J., and Jackson and Macpherson, JJ. Dec. 21, 1871.]

EVERY person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

Ct. of Ses.  
Uncog.  
Warrant.  
Not bailable.  
Not comp.

**121A.** Whoever, within or without British India, conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

*Explanation.*—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.\*

Ditto.

**122.** Whoever collects men, arms, or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

Ditto.

**123.** Whoever, by any act or by any illegal omission, conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

**124.** Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or

Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.

\* New section, inserted by Act XXVII. of 1870, s. 4.

refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council, assaults or wrongfully restrains, or attempts wrongfully to restrain, or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe such Governor-General, Governor, Lieutenant-Governor, or Member of Council, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

CHARGE.—That you, on or about the day of , at , with the intention of inducing the Honourable A. B., Member of the Council of the Governor-General of India, to restrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under s. 124 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].—Crim. Pro. Code (Act X. of 1882), sch. v., form xxviii. (i.).

124A. Whoever by words, either spoken or intended to be read, or by signs, or by visible representation, or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Ct. of Ses.  
Uncog.  
Warrant.  
Not bailable  
Not comp.

*Explanation.*—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Government, and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause.\*

125. Whoever wages war against the Government of any Asiatic power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

Ditto.

PUNISHMENT for the offence of waging war with an Asiatic power in alliance with the Queen.—Queen v. Keifa Singh, 3 W. R. 16. [Jackson and Glover, JJ. May 19, 1865.]

APPLICATION for pardon or mitigation of punishment for a political offence (e. g., waging war against a power in alliance with the Queen) should be made to the Executive Government.—Queen v. Sajowpa, 7 W. R. 64. [Seton-Karr, J. May 6, 1867.]

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years, and also be liable to fine and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation.

Ditto.

127. Whoever receives any property, knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term

Ditto.

\* New section, inserted by Act XXVII. of 1870, s. 5.

which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Ct. of Ses.  
Uncog.  
Warrant.  
Not bailable.  
Not comp.

**128.** Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

**129.** Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses.  
Uncog.  
Warrant.  
Not bailable.  
Not comp.

**130.** Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or harbours such prisoner, or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the re-capture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation.*—A State prisoner or prisoner of war who is permitted to be at large on his parole within certain limits in British India is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

## CHAPTER VII.

### OF OFFENCES RELATING TO THE ARMY AND NAVY.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**131.** Whoever abets the committing of mutiny by an officer, soldier, or sailor in the army or navy of the Queen, or attempts to seduce any such officer, soldier, or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation.*—In this section the words “officer” and “soldier” include any person subject to the Articles of War for the better government of Her Majesty’s army, or to the Articles of War contained in Act No. V. of 1869.\*

Ditto.

**132.** Whoever abets the committing of mutiny by an officer, soldier, or sailor in the army or navy of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

\* This explanation has been added by Act XXVII. of 1870, s. 6.

**133.** Whoever abets an assault by an officer, soldier, or sailor in the army or navy of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**134.** Whoever abets an assault by an officer, soldier, or sailor in the army or navy of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**135.** Whoever abets the desertion of any officer, soldier, or sailor in the army or navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

**136.** Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier, or sailor in the army or navy of the Queen, has deserted, harbours such officer, soldier, or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ditto.

*Exception.*—This provision does not extend to the case in which the harbour is given by a wife to her husband.

**137.** The master or person in charge of a merchant-vessel, on board of which any deserter from the army or navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment, but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Presy. Mag. or Mag. of 1st or 2nd class. Uncoog. Summons Bailable. Not comp.

**138.** Whoever abets what he knows to be an act of insubordination by an officer, soldier, or sailor in the army or navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

**139.** No person subject to any Articles of War for the army or navy of the Queen, or for any part of such army or navy, is subject to punishment under this Code for any of the offences defined in this chapter.

**140.** Whoever, not being a soldier in the military or naval service of the Queen, wears any garb, or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Any Mag. Cognizable. Summons. Bailable. Not comp.

## CHAPTER VIII.

### OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

141. An assembly of five or more persons is designated an "unlawful assembly," if the common object of the persons composing that assembly is—

Unlawful assembly.

*First.*—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or,

*Second.*—To resist the execution of any law or of any legal process; or,

*Third.*—To commit any mischief or criminal trespass, or other offence; or,

*Fourth.*—By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or,

*Fifth.*—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

*Explanation.*—An assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.

THE common object of the assembly should always be mentioned in the charge.—4 W. R. Cr. L. 9, 10, Nos. 1137 and 1150 of 1865.

IN order to convict of the offence of being members of an unlawful assembly, it must be shewn that the accused were actuated by a common object, and that the acts done by them were of such a nature as to make them guilty under s. 141 of the Penal Code.—*Queen v. Dinobundo Rai and others*, 9 W. R. 19. [Seton-Karr and Markby, JJ. Feb. 20, 1868.]

AN assembly, lawful in its inception, may become unlawful by its acts. If force is used, the higher offence of rioting has been committed.—*Queen v. Khemee Singh and others*, 1 W. R. 18. [Kemp, J. Sep. 26, 1868.]

WHERE the defendants, raiyats of portion of a zamindári sold in execution of a decree of the Civil Court, reaped and carried away their crops despite the purchaser's people, and refused to allow the purchaser's people to seal and mark grain which had been reaped, and the raiyats were assembled in such numbers and so armed that nothing could be done against them, *held* by the High Court that the acts of the defendants did not amount to an offence under s. 141 of the Penal Code.—*Pro.*, Aug. 10, 1869, 4 Mad. H. C. R. Ap. 65.

WHERE, of several persons constituting an unlawful assembly, some only are armed with sticks, and A, one of them, is not so armed, but picks up a stick and uses it, B (the master of A), who gave a general order to beat, is guilty of abetting the assault made by A.—*Queen v. Rasookoolah and others*, 12 W. R. 51. [Glover and Mitter, JJ. Sep. 2, 1869.]

THE act of the defendants in assembling and forcibly interrupting a procession was forbidden by cl. 4 of s. 141 of the Penal Code, although the defendants acted upon the ground that the procession was a nuisance or annoyance to them or their community.—*Pro.*, Nov. 16, 1869, 5 Mad. H. C. R. Ap. 6.

WHERE two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly, and to try them together, inasmuch as they do not have "one common object" within the meaning of s. 141 of the Penal Code.—*Queen v. Surroop Chunder Paul and another*, 12 W. R. 75. [Norman and Kemp, JJ. Dec. 10, 1869.]

**HELD** that the owner or occupier of land on which an unlawful assembly is held cannot be convicted under s. 154 of the Penal Code, unless there is a finding that the riot was premeditated. Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly, and to try them together, inasmuch as they do not have "one common object" within the meaning of s. 141 of the Penal Code. The right of an accused party to cross-examine witnesses is limited to a right to cross-examine the witness for the prosecutor or for the Crown called against him. If he wishes to avail himself of evidence which has been given, or which can be given by a witness called for another of the parties accused, he must call him as his own witness.—*Queen v. Surroop Chunder Paul* and another, 12 W. R. 75. [Norman and Kemp, JJ. Dec. 10, 1869.]

**WHERE** a police-officer duly appointed under Act V. of 1861 was engaged in the discharge of his duty as such police-officer at a time when an unlawful assembly took place, it was held that he was competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended was convicted of rescuing from lawful custody within the meaning of s. 225 of the Penal Code.—*Queen v. Assam Shurruff* and others, Petitioners, 13 W. R. 75. [Phear and Mitter, JJ. May 17, 1870.]

**PROCEDURE** to be observed in the case of a charge under s. 154, Penal Code, against the owner of land on which an unlawful assembly is held, pointed out. The record of the original riot case is no evidence in the case under s. 154.—*C. G. D. Betts* and *Mahomed Ismail Chowdhry*, Petitioners, In the Matter of, 15 W. R. 6; 6 B. L. R. Ap. 83. [Bayley and Mitter, JJ. Jan. 21, 1871.]

**THERE** is no ground for the distinction between an unlawful assembly as a premeditated act and an affray as a sudden one: for, according to s. 141 of the Penal Code, an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.—*Lokenath Kar* and others, Petitioners, 18 W. R. 2. [Bayley and Mitter, JJ. May 13, 1872.]

**IT** cannot be said that a person intentionally joins an unlawful assembly, or continues in it, when it appears from the evidence that he went to the place where the members of the unlawful assembly were gathered to prevent mischief being done to his own property which he had a right to protect.—*Birjoo Singh v. Khub Lall* and others, 19 W. R. 66. [Couch, C.J., and Glover, J. April 16, 1873.]

**IN** this case, in which the prisoners were convicted of being members of an unlawful assembly under s. 141 of the Penal Code, the Court held that the evidence was insufficient to warrant a conviction, there being nothing to shew what was the specific unlawful object, within the scope of cls. 3 and 4, of the persons composing the assembly.—*Koylash Chunder Dass* and others, Petitioners, 20 W. R. 78. [Phear and Morris, JJ. Nov. 18, 1873.]

**NO** charge of being members of an unlawful assembly under s. 141, Penal Code, can be sustained, where the intention of the parties was, not to enforce a right or supposed right, but to maintain undisturbed the actual subsisting enjoyment of a right which was at that time being exercised.—*Shunker Singh* and others (the Panohgaohia party), Petitioners; *Burmah Mahito* and others (the Amba party), Petitioners, 23 W. R. 25. [Phear and Morris, JJ. Jan. 22, 1875.]

**IF** a number of persons, assembled for any lawful purpose, suddenly quarrel with an intruder without any previous intention or design, they do not commit "riot" in the legal sense of the word.—*Khajah Noorul Hossein alias Khajah Waheed Jan v. Fabre-Tonnerre*, 24 W. R. 26. [Glover and Mitter, JJ. July 12, 1875.]

## 142. Whoever, being aware of facts which render any assembly an un-

Being member of unlawful assembly, lawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

**A LARGE** body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first-mentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed. **HELD**, by Norman, J. (whose opinion prevailed), that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under s. 149 of the Penal Code, be made liable for the subsequent murder. **HELD** by E. Jackson, J., that he remained a member of the unlawful assembly. In delivering

judgment, Norman, J., made the following important remarks: "The evidence shows that, on the retreat of the Kazis, and before the renewal of the combat in which Bahar Ali Mirza was killed, the prisoner Wahid Ali had separated himself from his faction, and sat down apart from them. He probably no longer had the same common object as the members of the unlawful assembly from which he had separated himself. It does not appear that he had continued to urge on the others. He was apparently solely occupied by his own suffering. He cannot be convicted under s. 149 unless he was a member of the unlawful assembly at the time of the committing the offence. We think the fair inference from the facts is that he had ceased to be so when the fatal wound was inflicted on Behar Ali Mirza, and therefore that he cannot be convicted or punished for an act committed by a member of that assembly under s. 149. It is plain that he was no longer co-operating with the others, and he had not the power to prevent or check the violence of the others as he might have had if he continued with them."—*Queen v. Kabil Cazeo*, 3 B. L. R. A. Cr. 1. [Norman and Jackson, JJ. April 8, 1869.]

It cannot be said that a person intentionally joins an unlawful assembly, or continues in it, when it appears from the evidence that he went to the place where the members of the unlawful assembly were gathered to prevent mischief being done to his own property which he had a right to protect.—*Birjoo Singh v. Khub Lall and others*, 19 W. R. 66. [Couch, C.J., and Glover, J. April 16, 1873.]

**143.** Whoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Punishment.

THE common object of the assembly should always be mentioned in the charge.—4 W. R. Cr. L. 9, 10, Nos. 1137 and 1150 of 1865.

THERE cannot be a conviction both of "rioting" and of "being members of an illegal assembly." The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. Were both original sentences legal, the appeal would lie to the Sessions Judge.—*Meelan Khalifa v. Dwarka Nath Goopto and others*, 1 W. R. 7. [Kemp and Glover, JJ. Aug. 17, 1864.]

AN assembly, lawful in its inception, may become unlawful by its acts. If force is used, the higher offence of rioting has been committed.—*Queen v. Khamee Singh and others*, 1 W. R. 18. [Kemp, J. Sep. 26, 1864.]

To convict a prisoner of being a member of an unlawful assembly and of culpable homicide not amounting to murder, it must be shown that he had an illegal object in common with, and took part in the illegal act done by, the others.—*Foiz Ali alias Imdad Ali and others, Appellants*, 1 W. R. 20. [Loch and Glover, JJ. Nov. 4, 1864.]

IN an affray respecting land one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. *Held* that the prisoners, not being legally guilty of culpable homicide, were not legally guilty of any other offence coupled with rioting, and, not being rioters, or members of an unlawful assembly, could claim the benefit of s. 104, Penal Code.—*Queen v. Mitto Singh and others*, 3 W. R. 41. [Seton-Karr and Campbell, JJ. July 11, 1865.]

HOUSE-TRESPASS and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.—*Queen v. Surroop Napit and others*, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 15, 1865.]

HELD by the majority that, where two members of an unlawful assembly use spears, and deliberately pierce another man through the chest and abdomen, with the knowledge that death is likely to ensue, although without proof of any intention to cause death, all the members of the unlawful assembly are jointly guilty of murder.—*Queen v. Nazoo Fakir and others*, 4 W. R. 26. [Kemp, Seton-Karr, and Campbell, JJ. Nov. 27, 1865.]

A SUBORDINATE Magistrate of the First Class has no power under s. 45 of the Code of Criminal Procedure to award any greater sentence of imprisonment in default of a payment of fine than six weeks in the case of persons convicted of being members of an unlawful assembly.—*Phoolman Tewary v. Satram Ojha and others*, 6 W. R. 51. [Norman and Seton-Karr, JJ. July 30, 1866.]

THE prisoner was convicted and sentenced separately for culpable homicide not amounting to murder, and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter being only part of the evidence of the former), the conviction and sentence for the second offence were quashed.—*Queen v. Rubbeecollah, 7 W. R. 13. [Norman and Seton-Karr, JJ. Jan. 16, 1867.]* See *contra* *Queen v. Hurgobind, 3 N. W. P. 174, infra, p. 90.*

WHERE persons join an unlawful assembly for the purpose of committing an assault, and, instead of preventing those armed from using their weapon, encourage them to do so, they are in the same position as those members of the unlawful assembly who struck the blows.—*Queen v. Dushruth Roy and others, 7 W. R. 58. [Glover, J. April 18, 1867.]*

CASE of an unlawful assembly, the members of which were held guilty of an offence under s. 402 of the Penal Code on their own admission that they not only knew that the assembly was an assembly for the purpose of committing dacoity, but also that all the persons (including themselves) constituting the assembly lived on the proceeds of dacoity, and had no other means of living.—*Queen v. Kendra Kamar and others, 7 W. R. 61. [Hobhouse, J. April 30, 1867.]*

IN a case of riot, in which a man was killed, the whole of the members of the unlawful assembly, as well the victorious as the worsted, were held equally guilty of culpable homicide not amounting to murder.—*Queen v. Mana Singh and others, 7 W. R. 103. [Kemp and Glover, JJ. May 7, 1867.]*

IN order to convict of the offence of being members of an unlawful assembly, it must be shewn that the accused were actuated by a common object, and that the acts done by them were of such a nature as to make them guilty under s. 141 of the Penal Code.—*Queen v. Dinobundo Rai and others, 9 W. R. 19. [Seton-Karr and Markby, JJ. Feb. 20, 1868.]*

A LARGE body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first-mentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed. *Held, by Norman, J. (whose opinion prevailed),* that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under s. 149 of the Penal Code, be made liable for the subsequent murder. *Held by E. Jackson, J.,* that he remained a member of the unlawful assembly. In delivering judgment, Norman, J., made the following important remarks: "The evidence shows that, on the retreat of the Kazis, and before the renewal of the combat in which Baher Ali Mirza was killed, the prisoner Wahid Ali had separated himself from his faction, and sat down apart from them. He probably no longer had the same common object as the members of the unlawful assembly from which he had separated himself. It does not appear that he had continued to urge on the others. He was apparently solely occupied by his own suffering. He cannot be convicted under s. 149 unless he was a member of the unlawful assembly at the time of the committing the offence. We think the fair inference from the facts is that he had ceased to be so when the fatal wound was inflicted on Baher Ali Mirza, and therefore that he cannot be convicted or punished for an act committed by a member of that assembly under s. 149. It is plain that he was no longer co-operating with the others, and he had not the power to prevent or check the violence of the others as he might have had if he continued with them."—*Queen v. Kabil Caze, 3 B. L. R. A. Cr. 1. [Norman and Jackson, JJ. April 8, 1869.]*

WHERE land in the possession of A was encroached on by the servants of B, who committed mischief on the land, and the servants of A assembled and resisted the encroachments, the High Court declined to interfere with the Magistrate's order convicting the servants of A of unlawful assembly, as there was no error in law in the order of the Magistrate, who found as a fact that the right of defence of private property had ceased under cl. 4, s. 105 of the Penal Code.—*Queen v. Rajkristo Doss and others, 12 W. R. 43. [Kemp and Markby, JJ. Aug. 3, 1869.]*

WHERE the defendants, raiyats of portion of a zamindári sold in execution of a decree of the Civil Court, reaped and carried away their crops despite the purchaser's people, and refused to allow the purchaser's people to seal and mark grain which had been reaped, and the raiyats were assembled in such numbers and so armed that nothing could be done against them, *held by the High Court* that the acts of the defendants did not amount to an offence under s. 141 of the Penal Code.—*Pro., Aug. 10, 1869, 4 Mad. H. C. R. Ap. 65.*



WHERE, of several persons constituting an unlawful assembly, some only are armed with sticks, and A, one of them, is not so armed, but picks up a stick and uses it, B (the master of A), who gave a general order to beat, is guilty of abetting the assault made by A.—*Queen v. Rasookollah and others*, 12 W. R. 51. [Glover and Mitter, JJ. Sep. 2, 1869.]

THE act of the defendants in assembling and forcibly interrupting a procession was forbidden by cl. 4 of s. 141, although the defendants acted upon the ground that the procession was a nuisance or annoyance to them or their community.—*Pro.*, Nov. 11, 1869, 5 Mad. H. C. R. Ap. 4.

WHERE the evidence in a case failed to establish anything like an unlawful assembly, the conviction was reduced from rioting and being members of an unlawful assembly to one for affray, although grievous hurt from which death resulted was caused to one of the persons. The insufficiency of the punishment allowed by the law in cases of affray pointed out.—*Queen v. Phoollee Misser and others*, 12 W. R. 72. [Jackson and Markby, JJ. Nov. 30, 1869.]

HELD that the owner or occupier of land on which an unlawful assembly is held cannot be convicted under s. 154 of the Penal Code, unless there is a finding that the riot was premeditated. Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly, and to try them together, inasmuch as they do not have "one common object" within the meaning of s. 141 of the Penal Code. The right of an accused party to cross-examine witnesses is limited to a right to cross-examine the witness for the prosecutor or for the Crown called against him. If he wishes to avail himself of evidence which has been given, or which can be given by a witness called for another of the parties accused, he must call him as his own witness.—*Queen v. Surroop Chunder Paul and another*, 12 W. R. 75. [Norman and Kemp, JJ. Dec. 10, 1869.]

WHERE a number of persons, members of an unlawful assembly, went to abduct A, and one of them killed B in the attempt to abduct A, held that all the persons concerned in the attempt at abduction were guilty (looking to s. 149 of the Penal Code) of causing the death of B.—*Queen v. Golam Arfin and others*, 13 W. R. 33; 4 B. L. R. A. Cr. 47. [Loch and Hobhouse, JJ. Feb. 19, 1870.]

WHERE a police-officer duly appointed under Act V. of 1861 was engaged in the discharge of his duty as such police-officer at a time when an unlawful assembly took place, it was held that he was competent to apprehend any of the members of such unlawful assembly; and a person who rescued the party apprehended was convicted of rescuing from lawful custody within the meaning of s. 225 of the Penal Code.—*Queen v. Assam Shurruff and others*, Petitioners, 13 W. R. 75. [Phear and Mitter, JJ. May 17, 1870.]

PROCEDURE to be observed in the case of a charge under s. 154, Penal Code, against the owner of land on which an unlawful assembly is held, pointed out. The record of the original riot case is no evidence in the case under s. 154.—*C. G. D. Betts and Mahomed Ismail Chowdhry*, Petitioners, In the Matter of, 15 W. R. 6; 6 B. L. R. Ap. 83. [Bayley and Mitter, JJ. Jan. 21, 1871.]

A CUMULATIVE sentence under s. 143 of the Penal Code (being a member of an unlawful assembly) and under s. 353 (using criminal force against a public servant) was upheld by the High Court in this case.—*Gobind Chunder Roy and others*, Petitioners, 16 W. R. 60. [Bayley and Paul, JJ. Nov. 25, 1871.]

THERE is no ground for the distinction between an unlawful assembly as a premeditated act and an affray as a sudden one: for, according to s. 141 of the Penal Code, an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly.—*Lokenath Kar and others*, Petitioners, 18 W. R. 2. [Bayley and Mitter, JJ. May 13, 1872.]

IT cannot be said that a person intentionally joins an unlawful assembly, or continues in it, when it appears from the evidence that he went to the place where the members of the unlawful assembly were gathered to prevent mischief being done to his own property which he had a right to protect.—*Birjoo Singh v. Khub Lall and others*, 19 W. R. 66. [Couch, C.J., and Glover, J. April 16, 1873.]

HELD (Ainslie, J., dissenting) that s. 149 of the Penal Code is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring a case within s. 49, the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the

offence, though committed in prosecution of the common object of the unlawful assembly, is one which the accused knew would be likely to be committed in prosecution of the common object. *Per* Jackson, J.—Any offence done by a member of an unlawful assembly in prosecution of the particular one or more of the five objects mentioned in s. 141, which is or are brought home to the unlawful assembly to which a prisoner belongs, is an offence within the meaning of the first part of s. 149. Where a certain number of persons, members of an unlawful assembly (party A), attacked another party (B), who were in occupation of land, with the view to drive them off the land by force, and one of the members in party A fired a gun at and killed one of the persons in party B, in consequence of a sudden and unexpected resistance which was offered by party B, it was held (Ainslie, J., dissenting), on a consideration of the evidence, that the persons composing party A other than the person who fired the gun could not be convicted of murder under s. 149, Penal Code. The conviction was altered under the circumstances to one of rioting armed with a deadly weapon under s. 148 of the Penal Code.—*Queen v. Sabid Ali and others*, 20 W. R. 5; 11 B. L. R. 347. [Couch, C.J., and Jackson, Phear, Ainslie, and Pontifex, JJ. April 21, 1873.]

In this case, in which the prisoners were convicted of being members of an unlawful assembly under s. 141 of the Penal Code, the Court held that the evidence was insufficient to warrant a conviction, there being nothing to shew what was the specific unlawful object, within the scope of cls. 3 and 4, of the persons composing the assembly.—*Koylash Chunder Dass and others*, Petitioners, 20 W. R. 78. [Phear and Morris, JJ. Nov. 18, 1873.]

In a case in which the accused were charged with unlawful assembly and trespass, the Magistrate acquitted the accused, but eventually ordered the parties to execute bonds and furnish security, refusing to take further evidence, and relying on the evidence which had been given before him in the original case in the presence of the accused. *Held* that the proceedings were irregular. The order was accordingly set aside.—*Diloo Singh v. Ootim Singh and others*, 22 W. R. 9. [Kemp and Birch, JJ. April 25, 1874.]

No charge of being members of an unlawful assembly under s. 141, Penal Code, can be sustained, where the intention of the parties was, not to enforce a right or supposed right, but to maintain undisturbed the actual subsisting enjoyment of a right which was at that time being exercised.—*Shunker Singh and others* (the Panchgachia party), Petitioners; *Burmah Mahto and others* (the Amba party), Petitioners, 23 W. R. 25. [Phear and Morris, JJ. Jan. 22, 1875.]

WHERE the officer in charge of a police-station required the officer in charge of another police-station to cause a search to be made in a house within the limits of his station, and such officer, on being required, deputed two officers subordinate to him to make the search without delivering to them the order in writing required by s. 379 of Act X. of 1872, it was held that the persons resisting the search attempted could not be lawfully convicted under ss. 353 and 143 of the Penal Code.—*Queen v. Narain*, 7 N. W. P. 209. [Turner, J. April 13, 1875.]

In a case in which the accused was bound down to keep the peace, the Assistant Magistrate admitted as evidence the depositions of witnesses in certain cases in which the accused was tried on charges of being a member of an unlawful assembly and of rioting, and was acquitted. *Held* that the Assistant Magistrate ought not to have admitted this evidence.—*Queen v. Dina Bundhoo Roy*, 24 W. R. 4. [Markby and Morris, JJ. May 10, 1875.]

WHERE a charge under the Penal Code, s. 342 (wrongful confinement), was substantiated against certain prisoners, the Joint-Magistrate was held not to have been justified in treating the case as one of unlawful assembly (s. 143), and disposing of it summarily under the Code of Criminal Procedure, s. 222.—*Haran Sheikh v. Ramdhun Biswas and others*, 24 W. R. 21. [Glover and Mitter, JJ. June 28, 1875.]

If a number of persons, assembled for any lawful purpose, suddenly quarrel with an intruder without any previous intention or design, they do not commit "riot" in the legal sense of the word.—*Khajjah Noorul Hossein alias Khajjah Waheed Jan v. Fabre-Tonnerre*, 24 W. R. 26. [Glover and Mitter, JJ. July 12, 1875.]

WHERE, after the object of an unlawful assembly had been accomplished, and the opposite party driven away, one of the members entered into an altercation with another, and wounded him with a fish-spear, it was held that the act was not one done with a view to accomplish the common object of the assembly, or one which the rest knew would be likely to be committed in the prosecution of that object.—*Binod and others*, Appellants, 24 W. R. 66. [Kemp and Glover, JJ. Nov. 17, 1875.]

THE offence of rioting consists in the use of violence by an unlawful assembly or by any member thereof in the prosecution of the common object. But, as in this case there were never five persons assembled together to constitute an unlawful assembly, and the intention to use force does not appear to have been carried out, no offence under the Penal Code is established against the accused.—*Ramadeen Doobay and others, Petitioners*, 26 W. R. 6. [Markby and Mitter, JJ. Aug. 17, 1876.]

If a body of men armed with lathis, and under the leadership of one, who, to the knowledge of the rest, is armed with a gun, assemble for the purpose of forcibly carrying off another man's property, and if, in effecting that purpose, any one of the party, taking the gun, shoots and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder under s. 149 of the Penal Code.—*Hari Singh and others v. Empress*, 3 C. L. R. 49. [Jackson, Mitter, and Maclean, JJ. June 4, 1878.]

To constitute an offence under s. 157 of the Penal Code, it must be proved that the accused has hired, or engaged, or employed other persons for the purpose of an unlawful assembly, and it not sufficient to show that some of the accused's servants have been taken from a district where men have a well-known character as lathials, and had been in his service some time before the riot was perpetrated. A non-resident partner or sharer, who has taken no active part in the management of the estate, cannot, like a resident sharer, be convicted under ss. 154 and 155 of the Penal Code.—In the *Matter of Radhanath Chowdhry*, 7 C. L. R. 289. [Mitter and Maclean, JJ. Sep. 9, 1880.]

A DISTURBANCE having been created with reference to the possession of certain churl land, the Sessions Judge on appeal found that certain persons had unlawfully trespassed thereupon, and that the accused had been justified in resisting the trespassers by force. Inasmuch, however, as he considered the accused had exceeded their right of private defence of their property, he convicted them of rioting under s. 148 of the Penal Code. *Held* that, on the findings of the Judge, the conviction could not be supported, inasmuch as on such findings the persons convicted were not members of an unlawful assembly.—In the *Matter of Kalee Mundle and others, Petitioners*, 10 C. L. R. 278. [Mitter and Maclean, JJ. Feb. 21, 1882.]

WHERE the object of only three persons was to draw a crowd, and their action was such as was calculated to and did draw a crowd of fifty or sixty persons likely to cause a disturbance of the public peace, *held* that the gathering constituted an assembly of five or more persons within the meaning of s. 151 of the Penal Code, and that a refusal to disperse after being lawfully commanded to disperse rendered every member of the gathering liable to conviction under the said section.—*Empress v. Tucker*, 1 L. R., 7 Bom. 42. [Kemball and Pinhey, JJ. Sep. 28, 1882.]

ON the trial of certain persons charged with being members of an unlawful assembly, it was proved that there was a dispute of long standing between the accused and certain other parties regarding the possession of certain land; that neither of the parties was in undisturbed possession of the land; that the accused went to sow the land with indigo, accompanied by a body of men armed with lathis; that they were prepared to use force, if necessary; and that the lathials kept off the opposite party by brandishing their weapons while the land was sowed. *Held* that the accused were rightly convicted of being members of an unlawful assembly under s. 143 of the Penal Code. *Sunkur Singh v. Burmah Mahto* (23 W. R. 25) distinguished.—In the *Matter of Peary Mohun Sircar*: *Peary Mohun Sircar v. Empress*, 1 L. R., 9 Cal. 639; 13 C. L. R. 80. [Wilson and Maclean, JJ. Mar. 1, 1883.]

A MEMBER of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—*Empress v. Ram Partab*, 1 L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.] Dissented from in *Queen-Empress v. Dugar Singh*, 1 L. R., 7 All. 29, *infra*, p. 92.

FOUR persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon, who went with his warrant for his arrest accompanied by other persons, A and B, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon and another by means of a dangerous weapon on A. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section, and two months' rigorous

imprisonment under the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on A, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other. *Held* that the offence of rioting was completed by the assault on A, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure. *Held*, further, that even if A had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused, taken separately, constituted offences under ss. 143 and 353 of the Penal Code, and, combined, an offence under s. 147; and under s. 235, sub-section 3 of the Code of Criminal Procedure, the accused might be charged with, and tried at one trial for, the offence under s. 147, and those under ss. 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code, as amended by s. 4 of Act VIII. of 1882, which limit had not been exceeded in the present case.—In the Matter of Chandra Kant Bhattacharjee; Chandra Kant Bhattacharjee v. Queen-Emress, I. L. R., 12 Cal. 495. [Mitter and Beverley, JJ. Dec. 11, 1885.]

**144.** Whoever, being armed with any deadly weapon, or with any thing which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Any Mag. Cognizable. Warrant. Bailable. Not comp.

THE common object of the assembly should always be mentioned in the charge.—4 W. R. Cr. L. 9, 10, Nos. 1137 and 1150 of 1865.

HOUSE-TRESPASS and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.—Queen v. Surroop Napiit and others, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 15, 1865.]

It is unnecessary to punish a prisoner under both s. 144 and s. 148 of the Penal Code, as the offence under s. 144 is almost merged in the offence under s. 148. There is, however, nothing actually illegal in sentencing for both offences.—Sreekiissen v. Juglal and others, 9 W. R. 5. [Kemp and Jackson, JJ. Jan. 13, 1868.]

**145.** Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ditto.

UNDER s. 127 of the Criminal Procedure Code (Act X. of 1882), any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

**146.** Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

A MEMBER of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—Emress v. Ram Partab, I. L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.] Dissented from in Queen-Emress v. Dungar Singh, I. L. R., 7 All. 29, *infra*, p. 92.

**147.** Whoever is guilty of rioting shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for rioting.

Ditto.

A HUSBAND, or those who aided him, cannot be convicted of kidnapping for taking away his own wife; but they are guilty of rioting if they carry out the husband's object of getting possession of his wife by force and violence and in the darkness of night.—*Queen v. Askur and another*, W. R. Sp. 12. [Steer and Seton-Karr, Feb. 22, 1864.]

THE prisoners having been part of an assembly of more than five persons, whose common object, as apparent from their acts, was, by means of criminal force, to recover possession of their cattle seized for trespass (whether properly pounded or not), and who made use of such force and took away their cattle, were held guilty of rioting, and liable to conviction under s. 147 of the Penal Code, and not under s. 11, Act V. of 1857.—*Queen v. Bokoo Sheikh and others*, W. R. Sp. 21. [Jackson, J. April 12, 1864.]

THERE cannot be a conviction both of "rioting" and of "being members of an illegal assembly." The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. Were both original sentences legal, the appeal would lie to the Sessions Judge.—*Meelan Khalifa v. Dwarka Nath Goopto and others*, 1 W. R. 7. [Kemp and Glover, JJ. Aug. 17, 1864.]

AN assembly, lawful in its inception, may become unlawful by its acts. If force is used, the higher offence of rioting has been committed.—*Queen v. Khamee Singh and others*, 1 W. R. 18. [Kemp, J. Sep. 26, 1864.]

IN an affray respecting land one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. Held that the prisoners, not being legally guilty of culpable homicide, were not legally guilty of any other offence coupled with rioting, and, not being rioters, or members of an unlawful assembly, could claim the benefit of s. 104, Penal Code.—*Queen v. Mitto Singh and others*, 3 W. R. 41. [Seton-Karr and Campbell, JJ. July 11, 1865.]

HOUSE-TRESPASS and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.—*Queen v. Surroop Napit and others*, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 15, 1865.] Upheld by *Queen v. Kali Sankar Sandyal*, 3 B. L. R. A. Cr. 14; 12 W. R. 2. But see *illus. g* to s. 235 of the Criminal Procedure Code (Act X. of 1882), which runs thus: "A, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under ss. 147, 325, and 152 of the Indian Penal Code."

DISPUTE between two parties (the Mollahs and Shikdars), in which the Shikdars attacked and killed one of the Mollahs when exercising the right of retaking their own property; three of the Shikdars being also wounded. The Shikdars were convicted of culpable homicide not amounting to murder, and rioting. As to the Mollahs, Loch, J., was of opinion that they were guilty of voluntarily causing grievous hurt; while the majority of the Court held that they were entitled to the protection conferred by s. 101, Penal Code, on those who, while exercising the right of private defence, caused their assailants any harm other than death.—*Queen v. Tanoo Shikdar and others*, 3 W. R. 47. [Loch, Kemp, and Seton-Karr, JJ. July 17, 1865.]

HELD by the majority of the Court (Seton-Karr, J., dissenting) that an attack made in the morning by an unlawful armed assembly, with the object of rescuing two thieves who had been captured during the night, and in which murder was committed, was a premeditated attack for which all concerned were liable to conviction for riot attended with murder.—*Queen v. Bhunjun Pauray and others*, 4 W. R. 8. [Kemp, Seton-Karr, and Glover, JJ. Sep. 12, 1865.]

A DISMISSAL by one Court of a charge of riot against A may be a bar to A's trial by another Court on the same charge, but it does not extend to other persons not then before the Court which ordered the dismissal. The dismissal by one Court of the charge of riot instituted by the police is no bar to the trial by another Court of a charge of criminal trespass instituted by a third person, although the two charges may substantially refer to the same occurrences. There is no right of appeal, because the united sentences in three separate cases amount to more than a month's imprisonment.—*Queen v. Morly Sheikh*, 6 W. R. 51. [Seton-Karr and Pundit, JJ. Aug. 6, 1866.]

WHERE an affray took place, both parties turning out armed with deadly weapons, it cannot be said that there was any right of private defence, as either party well knew

WHERE the evidence in a case failed to establish anything like an unlawful assembly, the conviction was reduced from rioting and being members of an unlawful assembly to one for affray, although grievous hurt from which death resulted was caused to one of the persons. The insufficiency of the punishment allowed by the law in cases of affray pointed out.—*Queen v. Phoollee Misser and others*, 12 W. R. 72. [Jackson and Markby, JJ. Nov. 30, 1869.]

WHERE two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly, and to try them together, inasmuch as they do not have "one common object" within the meaning of s. 141 of the Penal Code.—*Queen v. Surroop Chunder Paul and another*, 12 W. R. 75. [Norman and Kemp, JJ. Dec. 10, 1869.]

S. 62 of the Code of Criminal Procedure does not authorize a Magistrate summarily to direct a person to remove a wall erected on land alleged to belong to another person in the absence of evidence showing that a riot or affray was likely to occur.—*Radhakishore v. Giridharee Sahee*, 13 W. R. 19. [Loch and Hobhouse, JJ. Feb. 7, 1870.]

PERSONS found guilty of rioting may, if the circumstances warrant it, be convicted of the several offences of rioting armed with deadly weapons, culpable homicide, and grievous hurt.—*Queen v. Hurgobind*, 3 N. W. P. 174. [Turner, J. July 7, 1871.] See *contra* *Queen v. Rubbeeoolah*, 7 W. R. 13, *supra*, p. 83.

WHERE the accused were convicted under s. 147 of the Penal Code of rioting, and also under s. 353 of using criminal force to a constable who went to arrest them, the High Court set aside the conviction under the former section.—*Nilruttun Sein and others*, Petitioners, 16 W. R. 45. [Kemp and Ainslie, JJ. Sep. 9, 1871.]

AN accused person cannot be punished, first on a charge for rioting, and afterwards on a charge for hurt, when the latter is included in the former. *Per* D. N. Mitter, J.—An Appellate Court is bound precisely in the same way as the Court of first instance to test evidence extrinsically as well as intrinsically. *Per* Ainslie J.—A Magistrate, as an executive officer, is not bound to attend to a Judge's extra-judicial observation not warranted by law.—*Goomanee and others*, Petitioners, 17 W. R. 59. [Mitter and Ainslie, JJ. May 8, 1872.]

IN a case of very serious riot, the rioters were acquitted by the Magistrate because he thought they might have considered their act justified because the procession was illegal by virtue of some orders, which did not appear, which might have been efficacious in point of law. *Held* that the thinking a thing legal which is not so can be no defence to a man who violates a rule of law; that there was no evidence that the procession was illegal; and that, if it were, the accused were bound to invoke the aid of the tribunals charged with the enforcement of the law.—*Pro.*, Jan. 8, 1873, 7 Mad. H. C. R. Ap. 35.

Two parties were convicted of rioting. One party consisted of not less than five persons, who were all found to have been assembled together in the fight which took place, and it was also found that they, as well as their opponents, came armed with sticks, prepared to fight, and did fight. *Held* that they were not improperly convicted of rioting, their common object being to assault their opponents. The other party only consisted of four persons. It was not found what object they had in common with the first party. The fight did not occur in a public place. *Held* that they were not properly convicted of rioting. *Held* also that, had the fight occurred in a public place, it might have been held that the common object of both parties was to commit an affray.—*Queen v. Muzhur Hossein*, 5 N. W. P. 208. [Pearson, J. July 5, 1873.]

UNDER Act V. of 1861, a police-officer is bound to communicate information to his superior officer regarding the commission of a riot affecting the public peace, and to make an entry thereof in the diary which he is required by s. 44 of that Act to keep, and the omission to give such information brings him within the purview of s. 177 of the Penal Code.—*Syed Futteh Mahomed*, Petitioner, 21 W. R. 30. [Kemp and Glover, JJ. Jan. 17, 1874.]

WHERE the only evidence for the prosecution was that of witnesses whom the Judicial Commissioner considered unworthy of belief, it was *held* that the prisoners, who were charged with rioting, ought not to have been convicted on the statements of the opposite party who were also charged with rioting, such statements not being evidence against the accused in this case.—*Queen v. Khukree Ooram and others*, 21 W. R. 48. [Phear and Morris, JJ. Mar. 11, 1874.]

## CH. VIII.] OFFENCES AGAINST PUBLIC TRANQUILLITY. [S. 147.

It is necessary, before persons can be convicted of rioting, &c., under s. 147 or s. 149, Penal Code, to ascertain clearly that they have taken such a share in the transaction as will bring them within the criminal charge; and it must appear on the evidence that they had a common object, which common object they were going to carry out by unlawful means.—*Queen v. Gholam Mahomed and others*, 22 W. R. 17. [Markby and Mitter, JJ. May 26, 1874.]

WHERE a charge of rioting was tried summarily by the Magistrate as one of mis-chief and unlawful assembly, the Sessions Judge, relying on a case cited, submitted, at the request of the accused, that the summary order may be set aside, and the accused may be tried for rioting under ch. 17 of the Criminal Procedure Code. The High Court declined to interfere at the instance of the accused persons, and distinguished this from the case cited by the Sessions Judge, as the reference there was made by the Magistrate in the interests of public justice.—*Queen v. Abou Sheikh and others*, 23 W. R. 19. [Phear and Ainslie, JJ. Jan. 13, 1875.]

IN a case in which the accused was bound down to keep the peace, the Assistant Magistrate admitted as evidence the depositions of witnesses in certain cases in which the accused was tried on charges of being a member of an unlawful assembly and of rioting, and was acquitted. *Held* that the Assistant Magistrate ought not to have admitted this evidence.—*Queen v. Dina Bundhoo Roy*, 24 W. R. 4. [Markby and Morris, JJ. May 10, 1875.]

IF a number of persons, assembled for any lawful purpose, suddenly quarrel with an intruder without any previous intention or design, they do not commit "riot" in the legal sense of the word.—*Khajah Noorul Hossein alias Waheed Jan v. Fabre-Tonnerre*, 24 W. R. 26. [Glover and Mitter, JJ. July 12, 1875.]

THE offence of rioting consists in the use of violence by an unlawful assembly or by any member thereof in the prosecution of the common object. But, as in this case there were never five persons assembled together to constitute an unlawful assembly, and the intention to use force does not appear to have been carried out, no offence under the Penal Code is established against the accused.—*Ramadeen Doobay and others, Petitioners*, 26 W. R. 6. [Markby and Mitter, JJ. Aug. 17, 1876.]

WHERE both parties are armed and prepared to fight, it is immaterial who is the first to attack, unless it is shewn that the party was acting within the legal limits of the right of private defence.—*Kalee Beparee and others, Appellants*, 1 C. L. R. 521. [Jackson and Cunningham, JJ. Mar. 5, 1878.]

RIOTING and hurt in the course of such rioting are distinct offences, and each offence is separately punishable.—*Empress v. Ram Adhin*, 1 L. R., 2 All. 139. [Pearson, J. Feb. 5, 1879.]

MEMBERS of two opposing parties in a riot were, under two distinct committals, sent up for trial before the Sessions Judge and a jury. After the close of the case for the prosecution in one of these cases, the Sessions Judge, with the consent of the pleaders representing the accused, postponed the taking of the evidence for the defence, and proceeded to examine the witnesses for the prosecution in the counter-case before the same jury. The Court then took the evidence of the witnesses for the defence in the first and in the counter-case in the order named, and, after hearing the addresses of the various pleaders for the defence and the reply of the Government pleader, proceeded to sum up the facts in both cases to the jury, who returned a verdict in respect of all the accused. *Held* that the procedure resorted to by the Judge was a practical violation of the salutary rule which necessitated the keeping of trials in such cases distinctly separate, and that its adoption having materially prejudiced the interests of the accused, the convictions should be set aside. *Held* further [*Queen v. Sheik Bazu* (B. L. R. Sup. Vol. 750; 8 W. R. 47) distinguished] that the defect in the procedure could not be cured by the consent of the pleaders for the defence to the arrangement suggested by the Court.—*Hossein Buksh v. Empress*, 1 L. R., 6 Cal. 96. [Morris and Prinsep, JJ. June 24, 1880.]

To constitute an offence under s. 157 of the Penal Code, it must be proved that the accused has hired, or engaged, or employed other persons for the purpose of an unlawful assembly, and it is not sufficient to show that some of the accused's servants have been taken from a district where men have a well-known character as lathials, and had been in his service some time before the riot was perpetrated. A non-resident partner or sharer, who has taken no active part in the management of the estate, cannot, like a resident sharer, be convicted under ss. 154 and 155 of the Penal Code.—*In the Matter of Radhanath Chowdhry*, 7 C. L. R. 289. [Mitter and Maclean, JJ. Sep. 9, 1880.]

WHERE the accused had been convicted of riot under s. 148, and of grievous hurt under s. 325 of the Penal Code, the Sessions Judge on appeal held that the complainants had themselves been the aggressors, and that the accused had merely exercised the right of private defence; but inasmuch as they had not set up the plea of private defence, he considered it was not competent to him to set aside the conviction. *Held* that, on the finding of the Sessions Judge, the accused were entitled to an acquittal.—In the Matter of Kali Churn Mookerjee and others, Petitioners, 11 C. L. R. 232. [Prinsep and O’Kinealy, JJ. May 22, 1882.]

A PLEA of right to possession is no answer to a charge of rioting by making a forcible entry on land cultivated by a trespasser, who is in possession, and opposes the entry.—*Appayya v. Queen*, I. L. R., 6 Mad. 245. [Innes, J. Dec. 12, 10, 1882.]

WHERE a riot occurred, and complaints were lodged by both parties, the witnesses for the prosecution were in each case in turn examined-in-chief, then also in turn cross-examined, and in like manner re-examined, and the Court thereupon discharged the accused in one case, and called upon the accused in the other to go into his defence. *Held* that the procedure adopted was improper, and that there should be a new trial. *Empress v. Chandra Nath Sircar* (I. L. R., 7 Cal. 65; 8 C. L. R. 352) followed. The provisions of s. 439 of the Criminal Procedure Code in no way affect the powers of the High Court as a Court of Revision vested in it by the High Courts Act.—In the Matter of Chakowri Lall, 18 C. L. R. 275. [Prinsep, J. Aug. 13, 1883.]

A MEMBER of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—*Empress v. Ram Partab*, I. L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.] Dissented from in *Queen-Empress v. Dugar Singh*, I. L. R., 7 All. 29, *infra*.

THE offences of rioting, of voluntarily causing hurt, and of voluntarily causing grievous hurt, each of the two latter offences being committed against a different person, are all distinct offences within the meaning of s. 35 of the Criminal Procedure Code. Under the first paragraph of s. 235 of the Criminal Procedure Code a person accused of rioting and of voluntarily causing grievous hurt may be charged with and tried for each offence at one trial, and, under s. 35, separate sentence may be passed in respect of each. *Queen-Empress v. Ram Partab* (I. L. R., 6 All. 121) dissented from.—*Queen-Empress v. Dugar Singh*, I. L. R., 7 All. 29. [Brodhurst, J. July 22, 1884.]

ON the 8th August 1884, a Magistrate of the second class began an inquiry in a case in which several persons were accused of rioting and voluntarily causing grievous hurt. On the 6th September, the powers of a Magistrate of the first class were conferred on the Magistrate by an order of Government, which was communicated to him on the 8th September. On the 9th September, the case for the prosecution having closed, the Magistrate framed charges against each of the accused under ss. 323 and 325 of the Penal Code, recorded the statements of the accused and the evidence for the defence, and, on the 10th September, convicted the accused of all the charges, passing upon each of them, in respect of each charge, sentences which he could pass as a Magistrate of the first class, but could not have passed as a Magistrate of the second class. On appeal, the Sessions Judge, on the ground that the prisoners had committed the offence described in s. 148 of the Penal Code, *held* that the sentences passed by the Magistrate were illegal, as being inconsistent with the provisions of s. 71, paras. 2 and 4; and he accordingly reduced the sentences of imprisonment which the Magistrate had passed to the maximum of imprisonment which the Magistrate could have inflicted under s. 148. *Held* by the Full Bench (Petheram, C.J., and Brodhurst, J., dissenting) that the sentences passed by the Magistrate were legal. *Per* Oldfield, Mahmood, and Duthoit, JJ., that, with reference to the terms of s. 39 of the Criminal Procedure Code, a Magistrate of the second class, who has begun a trial as such, and continued it in the same capacity up to the passing of sentences, and who, prior to passing sentence, has been invested with the powers of a Magistrate of the first class, is competent to pass sentence in the case as a Magistrate of the first class. *Per* Oldfield and Duthoit, JJ., that the provisions of s. 71 of the Penal Code had no application to the case, inasmuch as the offences of causing grievous hurt and hurt formed no part of the offence of rioting. *Per* Petheram, C.J., that a case must be taken to be tried upon the day the trial commences; that for all the purposes of the trial, the Magistrate in this case retained the status of a Magistrate of the second class; and that he was therefore not competent to pass sentence as a Magistrate of the first class. Also *per* Petheram, C.J., that the Judge, in this case,



had no power to alter the charge, or to frame a new charge in any way. *Per Brodhurst, J.*, that the sentences passed by the Magistrate were, as a whole, illegal; that if he had convicted the accused under s. 148 of the Penal Code, his order would, under the circumstances, have been legal; that a Court of Appeal is not competent to alter the finding of a Magistrate, so as to convict an accused person of an offence which the Court of which the order is in appeal was not competent to try; and that a member of an unlawful assembly, some members of which have caused grievous hurt, can be legally punished for the offence of rioting as well as for the offence of causing grievous hurt. *Empress v. Dungan Singh (I. L. R., 7 All. 29)*, *supra*, p. 92, referred to.—*Queen-Empress v. Pershad, I. L. R., 7 All. 414*. [*Petheram, C.J.*, and *Oldfield, Brodhurst, Mahmood, and Duthoit, JJ.* Jan. 17, 1885.]

THREE persons, who were convicted (i) of riot under s. 147 of the Penal Code, (ii) of causing grievous hurt in the course of such riot, were respectively sentenced to six months' rigorous imprisonment under s. 147, and three months' rigorous imprisonment under s. 325. *Held by Petheram, C.J.*, and *Straight and Tyrrell, JJ.*, that inasmuch as the evidence upon the record showed that the three prisoners had committed individual acts of violence with their own hands, which constituted distinct offences of causing grievous hurt or hurt separate from, and independent of, the offence of riot, which was already completed, and the fact of the riot was not an essential portion of the evidence necessary to establish their legal responsibility under s. 325 of the Penal Code, the separate sentences passed under ss. 147 and 325 were not illegal. *Queen-Empress v. Ram Partab (I. L. R., 6 All. 121)*, *supra*, p. 92, distinguished. *Per Brodhurst, J.*, that the evidence showed that only one of the three prisoners had caused grievous hurt with his own hands, and that the others could only be properly convicted of that offence under the provisions of s. 149 of the Penal Code, but that the separate sentences passed under ss. 147 and 325 were not illegal. *Queen-Empress v. Dungan Singh (I. L. R., 7 All. 29)*, *supra*, p. 92, followed. Also *per Brodhurst, J.*—III. g of s. 325 of the Criminal Procedure Code does not apply merely to the case of persons who, in addition to the offence of rioting, have, with their own hands, committed the further offences of voluntarily causing grievous hurt, and of assaulting a public servant when engaged in suppressing a riot; and the convictions referred to in the illustration relate especially to convictions obtained under the provisions of s. 149 of the Penal Code.—*Queen-Empress v. Ram Sarup, I. L. R., 7 All 757*. [*Petheram, C.J.*, and *Straight, Brodhurst, and Tyrrell, JJ.* May 12, 1885.]

FOUR persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon, who went with a warrant for his arrest accompanied by other persons, A and B, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon and another by means of a dangerous weapon on A. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section, and two months' rigorous imprisonment under the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on A, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other. *Held* that the offence of rioting was completed by the assault on A, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure. *Held*, further, that even if A had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused, taken separately, constituted offences under ss. 143 and 353 of the Penal Code, and, combined, an offence under s. 147; and under s. 235, sub-section 3 of the Code of Criminal Procedure, the accused might be charged with, and tried at one trial for, the offence under s. 147, and those under ss. 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code, as amended by s. 4 of Act VIII. of 1882, which limit had not been exceeded in the present case.—In the Matter of Chandra Kant Bhattacharjee; *Chandra Kant Bhattacharjee v. Queen-Empress, I. L. R., 12 Cal. 495*. [*Mitter and Beverley, JJ.* Dec. 11, 1885.]

A, WITH six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under ss. 147, 325, and 152 of the Indian Penal Code.—*Crim. Pro. Code (Act X. of 1882), s. 235, illus. g.*

**148.** Whoever is guilty of rioting, being armed with a deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses.,  
Presy. Mag.  
or Mag. of 1st  
class,  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

THE offence of rioting armed with deadly weapons, and stabbing a person on whose premises the riot takes place, are distinct offences, and punishable as separate offences under ss. 148, 149, and 324 of the Penal Code, s. 149 being read as a proviso to s. 148.—*Queen v. Callachand and others*, 7 W. R. 60. [Norman and Seton-Karr, JJ. April 29, 1867.] See *contra Queen v. Durzoola*, 9 W. R. 33, *supra*, p. 89. Followed in *Empress v. Ram Adhin*, I. L. R., 2 All. 139, *supra*, p. 91.

IN a case of rioting with deadly weapons, the side found guilty of using them and causing grievous hurt are properly punishable more severely than the men of the other side.—*Queen v. Moorut Mahton and others*, 8 W. R. 3. [Kemp and Glover, JJ. June 3, 1867.]

THERE had been a riot and fight between two factions, and some members of one party (A) were charged with the murder of the leader of the other party (B), and some members of the other party (B) were charged with causing grievous hurt to the leader of party (A). *Held* that the members of each party should have been committed for trial separately, and that the Magistrate was wrong in committing the members of party (A) and of party (B) for trial all together upon joint charges as if they had had one common object.—*Queen v. Sheikh Bazu and others*, 8 W. R. 47; B. L. R. Sup. Vol. 750. [Peacock, C.J., and Loh, Bayley, Kemp, Seton-Karr, Phear, and Macpherson, JJ. July 27, 1867.]

IT is unnecessary to punish a prisoner under both s. 144 and s. 148 of the Penal Code, as the offence under s. 144 is almost merged in the offence under s. 148. There is, however, nothing actually illegal in sentencing for both offences.—*Sreekissen v. Juglal and others*, 9 W. R. 5. [Kemp and Jackson, JJ. Jan. 13, 1868.]

*HELD* that where the prisoners were charged under s. 148 of the Penal Code of rioting armed with deadly weapons, and also under s. 324 of voluntarily causing hurt by dangerous weapons, they should have been sentenced only under one or other of these sections, the charges being, properly speaking, only alternative charges. The High Court refused to interfere with the reception, by the Sessions Judge, of the uncorroborated evidence of accomplices.—*Reg. v. Dina Sheikh and others*, 10 W. R. 63; 3 B. L. R. 15, note. [Phear and Hobhouse, JJ. Dec. 15, 1868.]

CERTAIN persons made a sudden attack upon the prisoners for the purpose of cutting their crops. The prisoners resisted, and, having no time to complain to the police, inflicted a wound upon one of the assailants with a bamboo, from the effects of which he afterwards died. The Sessions Judge convicted the prisoners under ss. 148 and 304. In appeal the High Court held that the force used and the injuries inflicted were not such as to exceed the right of private defence of property, and directed an acquittal.—*Queen v. Guru Churn Chang*, 6 B. L. R. Ap. Cr. 9; 14 W. R. 69. [Kemp and Glover, JJ. Nov. 19, 1870.]

*HELD* (Ainslie, J., dissenting) that s. 149 of the Penal Code is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring a case within s. 149, the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence, though committed in prosecution of the common object of the unlawful assembly, is one which the accused knew would be likely to be committed in prosecution of the common object. *Per* Jackson, J.—Any offence done by a member of an unlawful assembly in prosecution of the particular one or more of the five objects mentioned in s. 141, which is or are brought home to the unlawful assembly to which a prisoner belongs, is an offence within the meaning of the first part of s. 149. Where a certain number of persons, members of an unlawful assembly (party A), attacked another party (B), who were in occupation of land, with the view to drive them off the land by force, and one of the members in party A fired a gun at and killed one of the persons in party B, in consequence of a sudden and unexpected resistance which was offered by party B, it was held (Ainslie, J., dissenting), on a consideration of the evidence, that the persons composing party A other than the person who fired the gun could not be convicted of murder under s. 149, Penal Code. The conviction was altered under the circumstances to one of rioting armed

with a deadly weapon under s. 148 of the Penal Code.—*Queen v. Sabid Ali and others*, 20 W. R. 5; 11 B. L. R. 347. [Couch, C.J., and Jackson, Phear, Ainslie, and Pontifex, JJ. April 21, 1873.]

No Magistrate is entitled to split up an offence into its component parts for the purpose of giving himself summary jurisdiction. If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed. Therefore, a Magistrate, when he has before him a person charged with having been armed with a deadly weapon while a member of an unlawful assembly, is not at liberty to disregard that part of the charge which charges the prisoner with having been armed with a deadly weapon, and so to give himself jurisdiction to try the case summarily, and then, by inflicting a sentence of imprisonment not exceeding three months, to deprive the prisoner of his right of appeal.—*Empress v. Goham Mahomed*; *Empress v. Abdool Kareem*, I. L. R., 4 Cal. 18; 3 C. L. R. 81. [White and Prinsep, JJ. July 19, 1878.]

WHERE death results in a fight between two bodies of men deliberately fighting together, a greater proportion of the men composing both sides being armed with deadly weapons, and it being further apparent from the evidence that the man slain was an adult, and that no unfair advantage was taken by the one side or the other during the fight, the offence committed is culpable homicide, but does not amount to murder.—*Samshere Khan v. Empress*, I. L. R., 6 Cal. 154; 7 C. L. R. 158. [White and Field, JJ. July 31, 1880.]

A DISTURBANCE having been created with reference to the possession of certain church land, the Sessions Judge on appeal found that certain persons had unlawfully trespassed thereupon, and that the accused had been justified in resisting the trespassers by force. Inasmuch, however, as he considered the accused had exceeded their right of private defence of their property, he convicted them of rioting under s. 148 of the Penal Code. Held that, on the findings of the Judge, the conviction could not be supported, inasmuch as on such findings the persons convicted were not members of an unlawful assembly.—*In the Matter of Kalee Mundle and others*, Petitioners, 10 C. L. R. 278. [Mitter and Maclean, JJ. Feb. 21, 1882.]

THE offences of rioting armed with a deadly weapon and voluntarily causing hurt with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting and of the hurt caused to each of the persons injured. A and B were charged with rioting armed with deadly weapons under s. 148 of the Penal Code, and they were also charged under s. 324, coupled with s. 149, with causing hurt by a dangerous weapon to X, and B was further charged under s. 324 with causing a like hurt to Y, A being also charged under s. 324, coupled with s. 149, in respect of the hurt caused by B to Y. A and B were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. The offences under s. 324 were committed during the riot. Held that the several acts with regard to which the prisoners were charged did not fall within the provisions of s. 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that consequently under s. 235 of the Criminal Procedure Code the several sentences passed were strictly legal.—*Loke Nath Sircar v. Queen-Empress*, I. L. R., 11 Cal. 349. [Tottenham and Ghose, JJ. Mar. 6, 1885.]

**149.** If an offence is committed by any member of an unlawful assembly Court by which offence is triable. Every member of unlawful assembly guilty of offence committed in prosecution of common object. in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence. According as arrest may be made without warrant for offence or not. According as warrant or summons may issue for offence. According as offence is bailable or not.

It is essential, under the above section, to state the common object of the unlawful assembly, in prosecution of which an offence was committed by one member, so as to render all liable to such offence.—1 Wyman's Rev., Civ., and Crim. Reporter, Cir. 3, 16.

To convict a prisoner of being a member of an unlawful assembly and of culpable homicide not amounting to murder, it must be shewn that he had an illegal object in common with, and took part in the illegal act done by, the others.—*Foiz Aly alias Imdad Ali and others*, Appellants, 1 W. R. 20. [Loch and Glover, JJ. Nov. 4, 1864.] Not comp.

**HELD** by the majority that, where two members of an unlawful assembly use spears and deliberately pierce another man through the chest and abdomen, with the knowledge that death is likely to ensue, although without proof of any intention to cause death, all the members of the unlawful assembly are jointly guilty of murder.—*Queen v. Naz-o-Takir and others*, 4 W. R. 26. [Kemp, Seton-Karr, and Campbell, JJ. Nov. 27, 1865.]

**WHEN** the result of a joint attack by several persons on one party is a fracture of the arm of the party assaulted, the offence committed is grievous hurt, and not assault; and as the attack was made in furtherance of a common object, all are equally guilty of the same offence.—*Queen v. Ramtohul Sing and others*, 5 W. R. 12. [Kemp and Glover, JJ. Jan. 16, 1866.]

If several persons go out together to apprehend a man, and take him to the thana on a charge of theft, and some of the party, in the presence of the others, assault and ill-treat the man, all present do not necessarily, by their presence, assist every act done, nor are consequently liable as principals. "In the present case," says Sir Barnes Peacock, "the attention of the Sessions Judge should, I think, be called to another error which he committed. He says the taking away of Oomadee, and assisting, by their presence, in the beating of him, abetted the commission of culpable homicide not amounting to murder. It does not follow that, because they were present with the intention of taking him away, they assisted, by their presence, in the beating of him to such an extent as to cause death. If the object and design of those who seized Oomadee was merely to take him to the thana on a charge of theft, and it was not part of the common design to beat him, they would not all be liable for the consequence of the beating, merely because they were present. It is laid down that when several persons are in company together, engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits any offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention. It is also said that although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who committed it, he will not be a felon, merely because he did not attempt to prevent it, or to apprehend the felon. But if several persons go out together for the purpose of apprehending a man and taking him to the thana on a charge of theft, and some of the party, in the presence of the others, beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on, without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties, and acting in concert, and that the beating was in furtherance of a common design. I do not know what the evidence was. All I wish to point is, that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."—*Queen v. Gora Chand Gope and others*, 5 W. R. 45. [Peacock, C.J., and Trevor and Norman, JJ. Mar. 3, 1866.]

**WHERE** persons join an unlawful assembly for the purpose of committing an assault, and, instead of preventing those armed from using their weapon, encourage them to do so, they are in the same position as those members of the unlawful assembly who struck the blows.—*Queen v. Dushruth Roy and others*, 7 W. R. 58. [Glover, J. April 18, 1867.]

**THE** offences of rioting armed with deadly weapons, and stabbing a person on whose premises the riot takes place, are distinct offences under ss. 148, 149, and 324 of the Penal Code, s. 149 being read as a proviso to s. 148.—*Queen v. Callachand and others*, 7 W. R. 60. [Norman and Seton-Karr, JJ. [April 29, 1867.] See *contra* *Queen v. Durzoolla and others*, 9 W. R. 33, *supra*, p. 89.

**A LARGE** body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first-mentioned faction was wounded, and retired to the side of the road, taking no further active part in the affray. After his retirement a member of the second faction was killed. **Held**, by Norman, J. (whose opinion prevailed), that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under s. 149 of the Penal Code, be made liable for the subsequent murder. **Held** by E. Jackson, J., that he remained a member of the unlawful assembly. In delivering judgment, Norman, J., made the following important remarks: "The evidence shows that, on the retreat of the Kazis, and before the renewal of the combat in which Baher Ali Mirza was killed, the prisoner Wahid Ali had separated himself from his faction, and sat down apart from them. He probably no longer had the same common object as the members of the unlawful assembly from which he had separated himself. It does not appear that he had continued to urge on the others. He was apparently solely occupied

by his own suffering. He cannot be convicted under s. 149 unless he was a member of the unlawful assembly at the time of the committing the offence. We think the fair inference from the facts is that he had ceased to be so when the fatal wound was inflicted on Bahar Ali Mirza, and therefore that he cannot be convicted or punished for an act committed by a member of that assembly under s. 149. It is plain that he was no longer co-operating with the others, and he had not the power to prevent or check the violence of the others as he might have had if he continued with them."—*Queen v. Kabil Cazece*, 3 B. L. R. A. Cr. 1. [Norman and Jackson, JJ. April 8, 1869.]

WHERE there has been no unlawful assembly, but a sudden quarrel, and an affray, from which resulted grievous hurt, and consequent death, there can only be a conviction for an affray, and not one for rioting.—*Queen v. Phoollee Misser*, 12 W. R. 72. In this case the High Court does not seem to have considered the question whether any one of the accused was guilty of culpable homicide. [Jackson and Markby, JJ. Nov. 30, 1869.]

WHERE a number of persons, members of an unlawful assembly, went to abduct A, and one of them killed B in the attempt to abduct A, held that all the persons concerned in the attempt at abduction were guilty (looking to s. 149 of the Penal Code) of causing the death of B.—*Queen v. Goham Arfin and others*, 13 W. R. 38; 4 B. L. R. 47. [Loch and Hobhouse, JJ. Feb. 19, 1870.]

HELD (Ainslie, J., dissenting) that s. 149 of the Penal Code is not intended to subject a member of an unlawful assembly to punishment for every offence which is committed by one of its members during the time they are engaged in the prosecution of the common object. In order to bring a case within s. 149, the act must be done with a view to accomplish the common object of the unlawful assembly, or it must be proved that the offence, though committed in prosecution of the common object of the unlawful assembly, is one which the accused knew would be likely to be committed in prosecution of the common object. *Per Jackson, J.*—Any offence done by a member of an unlawful assembly in prosecution of the particular one or more of the five objects mentioned in s. 141, which is or are brought home to the unlawful assembly to which a prisoner belongs, is an offence within the meaning of the first part of s. 149. Where a certain number of persons, members of an unlawful assembly (party A), attacked another party (B), who were in occupation of land, with the view to drive them off the land by force, and one of the members in party A fired a gun at and killed one of the persons in party B, in consequence of a sudden and unexpected resistance which was offered by party B, it was held (Ainslie, J., dissenting), on a consideration of the evidence, that the persons composing party A other than the person who fired the gun could not be convicted of murder under s. 149, Penal Code. The conviction was altered under the circumstances to one of rioting armed with a deadly weapon under s. 148 of the Penal Code.—*Queen v. Sabid Ali and others*, 20 W. R. 5; 11 B. L. R. 347. [Couch, C.J., and Jackson, Phear, Ainslie, and Pontifex, JJ. April 21, 1873.]

It is necessary, before persons can be convicted of rioting, &c., under s. 147 or s. 149, Penal Code, to ascertain clearly that they have taken such a share in the transaction as will bring them within the criminal charge; and it must appear on the evidence that they had a common object, which common object they were going to carry out by unlawful means.—*Queen v. Gholam Mahomed and others*, 22 W. R. 17. [Markby and Mitter, JJ. May 26, 1874.]

WHERE each of several persons took part in beating a person so as to break eighteen ribs and cause his death, each of them was held to be guilty, as a principal, of the murder of the deceased.—*Queen v. Gour Chunder Dass and others*, 24 W. R. 5. [Markby and Morris, JJ. May 31, 1875.]

WHERE, after the object of an unlawful assembly had been accomplished, and the opposite party driven away, one of the members entered into an altercation with another, and wounded him with a fishspear, it was held that the act was not one done with a view to accomplish the common object of the assembly, or one which the rest knew would be likely to be committed in the prosecution of that object.—*Binod and others, Appellants*, 24 W. R. 66. [Kemp and Glover, JJ. Nov. 17, 1875.]

If a body of men armed with lathies, and under the leadership of one, who, to the knowledge of the rest, is armed with a gun, assemble for the purpose of forcibly carrying off another man's property, and if, in effecting that purpose, any one of the party, taking the gun, shoots and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder under s. 149 of the Penal Code.—*Hari Singh and others v. Empress*, 3 C. L. R. 49. [Jackson, Mitter, and Maclean, JJ. June 4, 1878.]

A MEMBER of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—*Empress v. Ram Partab*, I. L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.]

THE offences of rioting armed with a deadly weapon and voluntarily causing hurt with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting and of the hurt caused to each of the persons injured. A and B were charged with rioting armed with deadly weapons under s. 148 of the Penal Code, and they were also charged under s. 324, coupled with s. 149, with causing hurt by dangerous weapons to X, and B was further charged under s. 324 with causing a like hurt to Y, A being also charged under s. 324, coupled with s. 149, in respect of the hurt caused by B to Y. A and B were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. The offences under s. 324 were committed during the riot. *Held* that the several acts with regard to which the prisoners were charged did not fall within the provisions of s. 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that consequently, under s. 235 of the Criminal Procedure Code, the several sentences passed were strictly legal.—*Loke Nath Sircar v. Queen-Empress*, I. L. R., 11 Cal. 349. [Tottenham and Ghose, JJ. Mar. 6, 1885.]

THE meaning of s. 149 is clearly explained by Alison in the following remarks:—  
“It is no less worthy of notice that this holds only with such outrages as are the natural result of the common enterprise, and which all who engaged in it must have made up their minds to be indifferent to, when they once concurred in its adoption. It will not hold, therefore, with separate and independent acts of violence as are not so much the object or natural and usual consequence of the undertaking, as the result of an accidental and casual ebullition of wickedness on the part of some of the actors which went much beyond the common purpose of the assembly. Thus, if a mob repair to a warehouse of grain with the intent to compel the dealer to sell at their own price, certainly all the measures calculated to constrain or intimidate his will are chargeable on all those present, as throwing stones, breaking open his doors, threatening or maltreating his own or his servant's person or the like; but if, taking advantage of the opportunity thus afforded, some individuals break into the building and commit theft or set it on fire, or murder the inmates, those ulterior and undesigned acts of violence can be stated only against the actual perpetrators.—*Principles of the Law of Scotland*, p. 524.

**150. Whoever hires, or engages or employs, or promotes or connives**

Hiring, or conniving at at the hiring, engagement, or employment of, hiring, of persons to join an any person to join or become a member of any unlawful assembly. unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement, or employment, in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

**151. Whoever knowingly joins or continues in any assembly of five or**

Knowingly joining or continuing in assembly of five or more persons after command to disperse. more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

*Explanation.*—If the assembly is an unlawful assembly within the meaning of s. 141, the offender will be punishable under s. 145.

AN order given by an officer superior in rank to an officer in charge of police-stations, commanding an assembly of five or more persons likely to cause a disturbance of the public peace to disperse, is a lawful order within the meaning of s. 480 of the Code of Criminal Procedure (Act X. of 1872).—*Empress v. Tucker*, I. L. R., 7 Bom. 42. [Kemball and Pinhey, JJ. Sep. 28, 1882.]

WHERE the object of only three persons was to draw a crowd, and their action was such as was calculated to and did draw a crowd of fifty or sixty persons likely to cause a disturbance of the public peace, held that the gathering constituted an assembly of five or more persons within the meaning of s. 151 of the Penal Code, and that a refusal to disperse after being lawfully commanded to disperse rendered every member of the gathering liable to conviction under the said section.—*Empress v. Tucker*, I. L. R., 7 Bom. 42. [Kimball and Pinhey, JJ. Sep. 28, 1882.]

152. Whoever assaults or threatens to assault, or obstructs or attempts	Ct. of Ses.
Assaulting or obstructing public servant when suppressing riot, &c.	Presy. Mag. or Mag. of 1st class.
to obstruct, any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful assembly, or to suppress a	Cognizable.
riot or affray, or uses, or threatens or attempts to use, criminal force to such public servant, shall be punished with imprisonment of either description for	Warrant. Bailable.
a term which may extend to three years, or with fine, or with both.	Not comp.

A, WITH six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under ss. 147, 325, and 152 of the Indian Penal Code.—*Crim. Pro. Code (Act X. of 1882), s. 235, illus. g.*

ILL. g of s. 325 of the Criminal Procedure Code does not apply merely to the case of persons who, in addition to the offence of rioting, have, with their own hands, committed the further offences of voluntarily causing grievous hurt, and of assaulting a public servant when engaged in suppressing a riot; and the convictions referred to in the illustration relate especially to convictions obtained under the provisions of s. 149 of the Penal Code.—*Queen-Empress v. Ram Sarup*, I. L. R., 7 All. 757. [Petheram, C.J., and Straight, Brod-hurst, and Tyrrell, JJ. May 12, 1885.]

153. Whoever maliciously or wantonly, by doing anything which is	Any Mag. Cognizable.
Wantonly giving provocation, with intent to cause riot—	Warrant. Bailable.
illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed,	Not comp.
shall, if the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year.	Any Mag. Cognizable.
If rioting be committed;	Summons. Bailable.
or with fine or with both; and if the offence of rioting be not committed, with imprisonment of either description for a term	Not comp.
If not committed.	
which may extend to six months, or with fine, or with both.	

154. Whenever any unlawful assembly or riot takes place, the owner	Presy. Mag. or Mag. of 1st or 2nd class.
Owner or occupier of land on which an unlawful assembly is held.	Uncog. Summons. Bailable.
or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such	Not comp.
land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.	

THE owner or occupier of land on which an unlawful assembly is held cannot be convicted under s. 154 of the Penal Code, unless there is a finding that the riot was pre-meditated.—*Queen v. Surroop Chunder Paul and another*, 12 W. R. 75. [Norman and Kemp, JJ. Dec. 10, 1869.]

THE following procedure should be observed in the case of a charge under s. 154 against the owner of land on which an unlawful assembly is held: The charge ought to be a clear and distinct charge of the offence specified in s. 154. After such charge the prisoner should be called on to plead, and if his plea is 'not guilty,' then legal evidence for the prosecution should be gone into. The records of another case would not, of themselves, be legal evidence itself for the conviction. This separate evidence in support of the charge under s. 154 being given, and a *prima-facie* case being made out for the prosecution, the prisoner must then be allowed opportunity to rebut that evidence, after which judgment should be passed.—C. G. D. Betts and Mahomed Ismail Chowdhry, Petitioners, 15 W. R. 6; 6 B. L. R. Ap. 83. [Bayley and Mitter, JJ. Jan. 21, 1871.]

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Summons.  
Bailable.  
Not comp.

**155.** Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

A ZAMINDAR ought not to be made liable under s. 155, Penal Code, for a sudden and unpremeditated riot which there was no reason to infer he could have anticipated, or thought likely to happen.—Queen v. Hurnath Roy, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 25, 1865.]

THE mere fact that a person is the owner or occupier of land, in respect of which, or upon which, a riot takes place, is not sufficient to raise a presumption against him. It must be positively proved that he or his agent or manager knew or had reason to believe that the riot would be committed, and, having that knowledge or belief, did not use all lawful means in his power to prevent, disperse, or suppress it.—Queen v. Surroop Chunder Paul and another, 12 W. R. 75. [Norman and Kemp, JJ. Dec. 10, 1869.]

To constitute an offence under s. 157 of the Penal Code, it must be proved that the accused has hired, or engaged, or employed other persons for the purpose of an unlawful assembly, and is not sufficient to show that some of the accused's servants have been taken from a district where men have a well-known character as *lattials*, and had been in his service some time before the riot was perpetrated. A non-resident partner or sharer, who has taken no active part in the management of the estate, cannot, like a resident sharer, be convicted under ss. 154 and 155 of the Penal Code.—In the Matter of Radhanath Chowdhry, 7 C. L. R. 289. [Mitter and Maclean, JJ. Sep. 9, 1880.]

IN order to convict the manager of an indigo-factory under s. 156 of the Penal Code, it must be shown by legal evidence: (1) that a riot was committed; (2) that the riot, if committed, was committed for the benefit of the accused; and (3) that the accused had reason to believe that a riot was likely to be committed.—Brae v. Empress, 1. L. R., 10 Cal. 338. [Mitter and Pigot, JJ. Sep. 22, 1883.]

Presy Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Summons  
Bailable  
Not comp.

**156.** Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place, and for suppressing and dispersing the same.



IN order to convict the manager of an indigo-factory under s. 156 of the Penal Code, it must be shown by legal evidence (1) that a riot was committed; (2) that the riot, if committed, was committed for the benefit of the accused; and (3) that the accused had reason to believe that a riot was likely to be committed.—*Brae v. Empress*, I. L. R., 10 Cal. 338. [Mitter and Pigot, JJ. Sep. 22, 1883.]

**157.** Whoever harbours, receives, or assembles in any house or premises  
 Harbours persons hired in his occupation or charge, or under his control,  
 for an unlawful assembly. any persons, knowing that such persons have been  
 hired, engaged, or employed, or are about to be hired, engaged, or employed,  
 to join or become members of an unlawful assembly, shall be punished with  
 imprisonment of either description for a term which may extend to six  
 months, or with fine, or with both.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

To constitute an offence under s. 157 of the Penal Code, it must be proved that the accused has hired, or engaged, or employed other persons for the purpose of an unlawful assembly, and it is not sufficient to show that some of the accused's servants have been taken from a district where men have a well-known character as *lattials*, and had been in his service some time before the riot was perpetrated. A non-resident partner or sharer, who has taken no active part in the management of the estate, cannot, like a resident sharer, be convicted under ss. 154 and 155 of the Penal Code.—In the Matter of Radhanath Chowdhry, 7 C. L. R. 289. [Mitter and Maclean, JJ. Sep. 9, 1880.]

**158.** Whoever is engaged or hired, or offers or attempts to be hired or  
 Being hired to take part in engaged, to do or assist in doing any of the acts  
 unlawful assembly or riot. specified in section 141, shall be punished with  
 imprisonment of either description for a term which may extend to six  
 months, or with fine, or with both; and whoever, being so engaged or hired  
 as aforesaid, goes armed, or engages or offers to go  
 Or to go armed. armed, with any deadly weapon, or with anything  
 which, used as a weapon of offence, is likely to cause death, shall be punished  
 with imprisonment of either description for a term which may extend to two  
 years, or with fine, or with both.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

**159.** When two or more persons, by fighting in a public place, disturb  
 the public peace, they are said to "commit an  
 affray."

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

**160.** Whoever commits an affray shall be punished with imprisonment  
 Punishment for committing of either description for a term which may extend  
 affray. to one month, or with fine which may extend to  
 one hundred rupees, or with both.

Any Mag.  
Uncog.  
Summons.  
Bailable.  
Not comp.

IN an affray respecting land, one party were the aggressors, and the other side (had the affair not ended fatally) would have been in the legal exercise of the right of defence of property, and would have been entitled to the benefit of s. 104 of the Penal Code, *held* one year's imprisonment was sufficient punishment for the latter.—*Queen v. Shunker Singh and others*, 1 W. R. 34. [Kemp and Glover, JJ. Dec. 5, 1864.]

A SENTENCE of rigorous imprisonment passed in a case of affray with homicide under Reg. VI. of 1828 quashed as illegal, and altered to one of imprisonment with labour.—*Queen v. Komaruddy Bhooya*, 1 W. R. 47. [Kemp and Glover, JJ. Dec. 21, 1864.]

IN a trial arising out of an affray or faction-fight, the members of each faction should be tried separately. The statements of the members of each faction can then, if desired, be taken on solemn affirmation, and be made evidence against their opponents; but if they decline to give evidence on the ground of implicating themselves, they cannot be compelled to do so.—*Queen v. Mahomed Hossein*, 1 N. W. P. 293. [Pearson and Turner, JJ. April 2, 1869.]

WHERE certain parties, in the course of a sudden quarrel, committed an affray, resulting in grievous hurt and consequent death, it was held that, as there was no unlawful assembly, there could not be a conviction for rioting, but for affray only. The question whether any of the prisoners were guilty of culpable homicide was not considered by the Court.—*Queen v. Phoollee Misser and others*, 12 W. R. 27. [Jackson and Markby, JJ. Nov. 30, 1869.]

PRISONERS were convicted of having committed an offence punishable under s. 160 of the Penal Code, and were sentenced to pay a fine of Rs. 25 each, or in default to be rigorously imprisoned for 30 days, the full term of imprisonment under the section. Held by a majority of the High Court (Kindersley, J., dissenting) that, having regard to the provisions of s. 309 of the Criminal Procedure Code (Act X. of 1872), the sentence was legal.—*Reg. v. Muhammad Saib*, I. L. R., 1 Mad. 277. [Innes, Offg. C.J., and Kindersley, Busteed, and Tarrant, JJ. Sep. 4, 1877.] But see the following ruling:

S. 33 of the Criminal Procedure Code, 1882, does not authorise a Magistrate to pass a sentence in default of payment in excess of the term prescribed by s. 65 of the Penal Code.—*Reg. v. Muhammad Saib*, I. L. R., 1 Mad. 277, was overruled in 1881.—*Queen-Empress v. Venkaté Sagadu*, I. L. R., 10 Mad. 165. [Collins, C.J., and Kernan, Muttusami Ayyar, Brandt, and Parker, JJ. Jan. 18, 1887.]

## CHAPTER IX.

### OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.\*

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
class.  
Uncog.  
Summons.  
Bailable.  
Not comp.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing, or forbearing to do, any official act, or for showing, or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

*Explanations.*—"Expecting to be a public servant."—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

"Gratification."—The word "gratification" is not restricted to pecuniary gratifications, or to gratifications estimable in money.

"Legal remuneration."—The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves to accept.

"A motive or reward for doing."—A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

\* Act IV. of 1879 declares railway-servants to be public servants.

*Illustrations.*

(a) A, a munsif, obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(b.) A, holding the office of Resident at the Court of a subsidiary Power, accepts a lakh of rupees from the Minister of that Power. It does not appear that A accepted this sum as a motive or a reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that Power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that Power. A has committed the offence defined in this section.

(c.) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

THE Law Commissioners remark : " The punishment of fine will, we think, be found very efficacious in cases of this description, if the Judges exercise the power given them as they ought to do, and compel the delinquent to deliver up the whole of his ill-gotten gain."

A OFFERS a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in s. 161.—Penal Code, s. 109, *illus. a.*

CHARGE.—That you, being a public servant in the Department, directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under s. 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or High Court*].—Crim. Pro. Code (Act X. of 1882), sch. v., form xxviii. (i).

UNDER the above section a charge should be so framed as to deal with separate motives in separate heads.—5 Rev., Jud., and Pol. Jour. 138.

THE prisoner was convicted by the Sessions Judge of the offence of accepting a gratification as police-patel under s. 161 of the Penal Code. The examination of the prisoner before the Magistrate was not taken down in the form of question and answer, as required by s. 205 of the Criminal Procedure Code. *Per Curiam*.—"The examination under s. 205, to be admissible as evidence under s. 366, must be taken in the form of question and answer, and certified as required in s. 205. But if it be not taken, as in the present case, the Court can order the confession to be proved by the evidence of the writer of the examination, or other person who was present. In this case, however, the evidence is sufficient without the inadmissible examination, and, under ss. 426 and 439, the admission of the examination as evidence does not invalidate the trial and conviction."—*Reg. v. Vithoji valad Abba*, 2 Bom. H. C. R. 398. [Couch and Newton, JJ. . Mar. 16, 1864.]

CASE of offering a bribe to a juryman.—Although what passed between the prisoner and the juryman might not have amounted to an offer of a bribe to the latter, yet it was held to be so when taken in connection with what passed between the prisoner and the juryman's brother.—*Queen v. Bawool Chunder Biswas*, 1 W. R. 36. [Kemp and Glover, JJ. Dec. 7, 1864.]

THE motives under which an accused person is charged with having taken a sum of money other than a legal remuneration should not have been gathered together as one head of the charge. If it was necessary that they should be all charged owing to a doubt in the mind of the committing officer as to which would be proved or presumed, they should be formed into separate heads; but it would have been preferable had only one or two of these motives been selected.—4 W. R. Cr. L. 3, No. 904 of 1865.

THE taking of a gratification by a sarishtadar to influence the Principal Sadr Amin in his decisions is sufficient to a legal conviction, whether the sarishtadar did, or did not, influence, or try to influence, the Principal Sadr Amin.—*Queen v. Kallee Churn Sarishtadar*, 3 W. R. 10. [Glover, J. May 11, 1865.]

THE evidence of the person who bribes is admissible against the person bribed. A person who accepts, for himself or for some other person, a gratification for inducing, by

corrupt or illegal means, a public servant to forbear to do a certain official act, is punishable, not under s. 161, but under s. 162 of the Penal Code.—*Queen v. Obhoy Churn Chuckerbutty and another*, 3 W. R. 19. [Glover, J. May 30, 1865.]

AN indictment will not be invalidated in consequence of the charge not notifying the specific section under which it has to be prosecuted. Under s. 161, it is necessary to show that the offence, the instigation of which is the subject of the charge, has been committed.—*Queen v. Natabar Nundy*, 1 Ind. Jur. N. S. 43. [Peacock, C.J., and Morgan and Macpherson, JJ. Jan. 22, 1866.]

WHERE a constable and others enter a house and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others.—*Government v. Mahomed Hossein and others*, 5 W. R. 49. [Norman and Campbell, JJ. Mar. 5, 1866.]

HELD that bribery and other offences punishable under the Penal Code with imprisonment exceeding six months are not triable under ch. 15 of the Code of Criminal Procedure, and cannot, therefore, be compromised under s. 271 of the latter Code.—On a letter No. 100, dated 29th May 1869, from the Officiating Sessions Judge of Jessore to the Registrar of the High Court, 12 W. R. 59. [Peacock, C.J., and Bayley, Kemp, Macpherson, and Glover, JJ. Sep. 6, 1869.]

A PATWARI taking grain as a consideration for showing favour to the giver in the discharge of his functions as patwari should be convicted under s. 161 (and not s. 165) of the Penal Code. Under s. 253 of the Criminal Procedure Code, it is imperative upon the Magistrate to summon the witnesses named by the prisoner.—*Queen v. Muds-ooddeen*, 2 N. W. P. 148. [Spankie, J. April 29, 1870.]

THE local Government, in sanctioning or directing (under s. 167 of the Criminal Procedure Code, 1861) a charge against a public servant of an offence as such public servant, has power to limit its sanction by giving directions as to the person by whom, and the manner in which, the prosecution is to be preferred and conducted; and a Court has no jurisdiction to entertain a charge against such public servant if preferred otherwise than in accordance with such directions. *Semle*.—The local Government has power in the like case to direct that the accused servant shall be tried before a specified tribunal, being one having jurisdiction in that behalf. Therefore, where the sanction directed that the accused public servant should be prosecuted upon such charges as Mr. C. might be prepared to prefer against him, and there was nothing on the record to show, nor did it otherwise appear, that Mr. C. had preferred any charge against, or taken any part in the prosecution of, the accused public servant, the High Court quashed the conviction of the accused as having been without jurisdiction.—*Reg. v. Vinayak Divakar*, 8 Bom. H. C. R. 32. [Westropp, C.J., and Gibbs and West, JJ. June 14, 1871.]

A PEON of a Collector's Court, who received no fixed pay from the Government, but was remunerated by fees whenever employed to serve any process, and was placed on the register of supernumerary peons, had been ordered by the Magistrate to do duty on a particular day at the office of the special sub-registrar, where he was detected receiving an eight-anna piece from a person, and was prosecuted for receiving an illegal gratification as a public servant. *Held* that the peon was a public servant under the definition of cl. 9, s. 21. A person who in fact (though wrongly) discharges the duties of an office whereby he is, to all appearance, a public servant, may, as such, be tried for receiving an illegal gratification under p. 161.—*Queen v. Ramkrishno Doss and another*, 16 W. R. 27; 7 B. L. R. 446. [Ainslie and Paul, JJ. July 24, 1871.]

ON a conviction of taking illegal gratification, a simple order to refund the money taken is quite inadequate to the gravity of the offence. Although no appeal lay in such a case, yet the High Court, upon a reference, having power to interfere, quashed the conviction.—*Mutty Lal Chuttopadhya and another, Petitioners*, 16 W. R. 64. [Bayley and Kemp, JJ. Dec. 8, 1871.]

WHERE the accused was charged under s. 116, Penal Code, with having abetted the commission of an offence punishable under s. 161 of that Code, the person abetted having been a Civil Surgeon of a Sadr Station, it was held that the enhanced imprisonment prescribed by the latter part of s. 161 could not be awarded, as the Civil Surgeon was not a public servant within the words of the section, "whose duty it is to prevent the commission of such offence."—*Queen v. Ramnath Surma Biswas*, 21 W. R. 9. [Phear and Morris, JJ. Nov. 18, 1873.]

## S. 162.] OFFENCES RELATING TO PUBLIC SERVANTS. [CH. IX.

person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.—Crim. Pro. Code (Act X. of 1882), s. 197.

It is not generally known that where a person gives a bribe to a public servant at the latter's request, the giver commits no offence. The authors of the Code make the following important remarks on the subject: "One important question still remains to be considered. We are of opinion that we have provided sufficient punishment for the public servant who receives a bribe. But it may be doubted whether we have provided sufficient punishment for the person who offers it. The person who, without any demand, express or implied, on the part of a public servant, volunteers an offer of a bribe, and induces that public servant to accept it, will be punishable under the general rule contained in cl. 88 as an instigator. But the person who complies with a demand, however signified, on the part of a public servant, cannot be considered as guilty of instigating that public servant to receive a bribe. We do not consider such a person to be liable to any punishment, and, as this omission may possibly appear censurable to many persons, we are desirous to explain our reasons. In all states of society the receiving of a bribe is a bad action, and may properly be made punishable. But whether the giving of a bribe ought or ought not to be punished is a question which does not admit of a short and general answer. There are countries in which the giver of a bribe ought to be more severely punished than the receiver. There are countries, on the other hand, in which the giving of a bribe may be what it is not desirable to visit with any punishment. In a country situated like England, the giver of a bribe is generally far more deserving of punishment than the receiver. The giver is generally the tempter; the receiver is the tempted. The giver is generally rich, powerful, well educated; the receiver, needy and ignorant. The giver is under no apprehension of suffering any injury if he refuses to give. It is not by fear, but by ambition, that he is generally induced to part with his money. Such a person is a proper subject of punishment. But there are countries where the case is widely different—where men give bribes to Magistrates from exactly the same feeling which leads them to give their purses to robbers, or to pay ransom to pirates—where men give bribes because no man can, without a bribe, obtain common justice. In such countries we think that the giving of bribes is not a proper subject of punishment. It would be as absurd, in such a state of society, to reproach the giver of a bribe with corrupting the virtue of public servants, as it would be to say that the traveller who delivers his money when a pistol is held to his breast corrupts the virtue of the highwayman. We would by no means be understood to say that India, under the British Government, is in a state answering to this last description. Still we fear it is undeniable that corruption does prevail to a great extent among the lower class of public functionaries, that the power which those functionaries possess renders them formidable to the body of the people, that in the great majority of cases the receiver of the bribe is really the tempter, and that the giver of the bribe is really acting in self-defence. Under these circumstances we are strongly of opinion that it would be unjust and cruel to punish the giving of a bribe, in any case in which it could not be proved that the giver had really by his instigations corrupted the virtue of a public servant who, unless temptation had been put in his way, would have acted uprightly."

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
class.  
Uncog.  
Summons.  
Bailable.  
Not comp.

**162.** Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person, with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

THE evidence of the person who bribes is admissible against the person bribed. A person who accepts, for himself or for some other person, a gratification for inducing, by

## CH. IX.] OFFENCES RELATING TO PUBLIC SERVANTS. [Ss. 163-65.

corrupt or illegal means, a public servant to forbear to do a certain official act, is punishable, not under s. 161, but under s. 162 of the Penal Code.—*Queen v. Obhoy Churn Chuckerbutty* and another, 3 W. R. 19. [Glover, J. May 30, 1865.]

A CONVICTION, on a charge of attempting to receive a gratification for influencing a public servant in the exercise of his public functions, is illegal as disclosing no legal offence when it omits to state the person or persons for whom the gratification was obtained, or the public servant to be influenced in the exercise of his public functions. A Judge ought to explain to the jury the legal construction to be put on a document relied on by the prosecution.—*Queen v. Setul Chunder Bagchee*, 3 W. R. 69. [Kemp and Seton-Karr, JJ. Aug. 29, 1865.]

**163.** Whoever accepts or obtains, or agrees to accept or attempts to

Taking gratification for exercise of personal influence with public servant.

obtain, from any person, for himself or for any other person, any gratification whatever, as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Presy. Mag. or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

### Illustration.

An advocate who receives a fee for arguing a case before a Judge ; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist ; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust ; are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

**164.** Whoever, being a public servant, in respect of whom either of

Punishment for abetment by public servant of offence above defined.

the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description

for a term which may extend to three years, or with fine, or with both.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

### Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

**165.** Whoever, being a public servant, accepts or obtains, or agrees to

Public servant obtaining any valuable thing, without consideration, from person concerned in any proceeding or business transacted by such public servant.

accept or attempts to obtain, for himself or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be, concerned in any proceeding or business transacted, or about to be transacted, by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in, or related to, the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

*Illustrations.*

(a.) A, a Collector, hires a house of Z, who has a settlement-case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(b.) A, a Judge, buys of Z, who has a cause pending in A's Court, Government promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(c.) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

A PATWARI taking grain as a consideration for showing favour to the giver in the discharge of his functions as patwari should be convicted under s. 161 (and not s. 165) of the Penal Code.—*Queen v. Muds-ooddeen*, 2 N. W. P. 148. [Spankie, J. April 29, 1870.]

WHERE a complaint charged a person who was one of the public servants mentioned in s. 167 of the Criminal Procedure Code with committing acts which, if committed by a private individual, would have constituted the offence of extortion, it was held that it was not illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution.—*Reg. v. Parshram Keshav*, 7 Bom. H. C. R. 61. [Gibbs and Melville, JJ. July 28, 1870.]

K, a police-officer, employed in a Criminal Court to read the diaries of cases investigated by the police, and to bring up in order each case for trial with the accused and witnesses, after a case of theft had been decided by the Court in which the persons accused were convicted, and a sum of money, the proceeds of the theft, had been made over by the order of the Court to the prosecutor in the case, asked for, and received from, the prosecutor a portion of such money, not as a motive or reward for any of the objects described in s. 161 of the Penal Code, but as "dasturi." Held that K was not, under these circumstances, punishable under s. 161 of the Penal Code, but under s. 165 of that Code.—*Empress v. Kampta Prasad*, I. L. R., 1 All. 530. [Stuart, C.J., and Spankie, J. Dec. 15, 1877.]

THE accused was charged with having received illegal gratifications from C. and Co. on three specific occasions in 1876. In 1876, 1877, and 1878, C. and Co. were doing business as commissariat contractors, and the accused was the manager of the Commissariat Office. Held that evidence of similar but unconnected instances of receiving illegal gratifications from C. and Co. in 1877 and 1878 was not admissible against him under ss. 5 to 13 of the Evidence Act. Held per Garth, C.J. (Maclean, J., concurring).—The evidence was not admissible under s. 14. Per Garth, C.J.—S. 14 applies to cases where a particular act is more or less criminal or culpable according to the state of mind or feeling of the person who does it; not to cases where the question of guilt or innocence depends upon actual facts, and not upon the state of a man's mind or feeling. Per Mitter, J.—If the receipt of the illegal gratifications mentioned in the charge be considered proved by other evidence, and if it were necessary to ascertain whether the accused received them as a motive for showing favour in the exercise of his official functions, the alleged transactions of 1877 and 1878 would be relevant under s. 14, but they would not be relevant to establish the fact of payments in 1876.—*Empress v. M. J. Vyapoory Moodeliar*, I. L. R., 6 Cal. 655; 8 C. L. R. 197. [Garth, C.J., and Mitter and Maclean, JJ. Jan. 22, and Feb. 9, 1881.]

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will,

Presy. Mag.  
or Mag. of 1st  
or 2nd class,  
Uncog.  
Summons.  
Bailable.  
Not comp.

Public servant disobeying law, with intent to cause injury to any person.

by such disobedience, cause, injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

*Illustration.*

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is likely thereby to cause injury to Z. A has committed the offence defined in this section.

**CHARGE.**—That you, on or about the      day of      , at      , did [or omitted to do, *as the case may be*], such conduct being contrary to the provisions of Act      section      , and known by you to be prejudicial to      , and thereby committed an offence punishable under s. 166 of the Indian Penal Code, and within [my cognizance, or the cognizance of the Court of Session (or High Court)].—Crim. Pro. Code (Act X. of 1882), sch. v., form xxviii. (i.).

A POST-MASTER, who absents from his station without leave, and thereby causes delay in the despatch of the mails, should be convicted under s. 47 of the Post-office Act (XIV. of 1866), and not under s. 166 of the Penal Code.—Weir, p. 31.

A WITNESS summoned to produce a document shall, if it is in his possession or power, bring it to Court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the Court. The Court, if it sees fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility. If for such a purpose it is necessary to cause any document to be translated, the Court may, if it thinks fit, direct the translator to keep the contents secret, unless the document is to be given in evidence; and if the interpreter disobeys such direction, he shall be held to have committed an offence under s. 166 of the Penal Code.—Evidence Act (I. of 1872), s. 162.

ANY marriage-registrar, knowingly and wilfully issuing any certificate for marriage after the expiration of three months after the notice has been entered by him as aforesaid, or knowingly and wilfully issuing, without the order of a competent Court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage is a minor, before the expiration of fourteen days after the entry of such notice, or any certificate the issue of which has been forbidden as aforesaid by any person authorized by him in this behalf, shall be deemed to have committed an offence under s. 166 of the Penal Code.—Christian Marriage Act (XV. of 1872), s. 72.

**167.** Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Public servant framing an incorrect document with intent to cause injury. Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Summons. Bailable. Not comp.

ACCUSED, a village-patwari, prepared an incorrect copy of an entry in his *roznamcha* for S, plaintiff in a civil suit. The entry related to a contract between S and another. Accused was convicted, under s. 167, of framing an incorrect document, as a public servant. *Held (per Lindsay, J.)* that the conviction was right.—Hira Singh v. Crown, Panj. Rec., No. 32 of 1872.

ACCUSED, a copyist in the Small Cause Court office, framed an incorrect copy of a document filed with a certain record, by adding a name not contained in the original. The incorrect copy was delivered duly certified to one L D, the applicant for it, and who was probably in collusion with the copyist. This copy was afterwards made use of in a suit against the person whose name had been fraudulently added, and then the fraud was detected. The Magistrate convicted accused under s. 167, and ordered him to pay a fine of Rs. 100. *Held* that s. 167 was not applicable to the case, as it was not shown that accused intended or knew it to be likely that he would cause injury to any person, but that the accused had committed the offence of "issuing or signing a false certificate"



within the meaning of s. 197. *Held* also (*per* Barkley, J.) that making what purports to be a copy of a document is not included in the words "preparation or translation of any document," nor in the words "frames or translates that document," as used in s. 167.—*Crown v. Deiva Singh*, Panj. Rec., No. 15 of 1879.

Presy. Mag.  
or Mag. of  
1st class.  
Uncog.  
Summons.  
Bailable.  
Not comp.  
Ditto.

168. Whoever, being a public servant, and being legally bound, as such public servant, not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

169. Whoever, being a public servant, and being legally bound, as such public servant, not to purchase or bid for certain property, purchases or bids for that property, either in his own name or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both; and the property, if purchased, shall be confiscated.

WHERE a sub-inspector of police was charged with having purchased a pony which had been impounded, it was *held* that the Magistrate should have proceeded under s. 19, Act I. of 1871, taken with s. 169 of the Penal Code, and that the accused could not be convicted under s. 406 of the Penal Code of criminal breach of trust.—*Rajkristo Biswas*, Petitioner, 16 W. R. 52; 8 B. L. R. Ap. 1. [Kemp, Offg. C.J., and Ainslie, J. Sep. 25, 1871.]

Any Mag.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

170. Whoever pretends to hold any particular office as a public servant, Personating a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

THE prisoner, having passed himself off as a police-officer, and cheated several villagers out of money, was held guilty of cheating and falsely personating a public servant.—*Queen v. Sadanund Doss alias Sona Biswas*, 2 W. R. 29. [Kemp, J. Jan. 30, 1865.]

Any Mag.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

171. Whoever, not belonging to a certain class of public servants, Wearing garb or carrying token used by public servant with fraudulent intent, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed, that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

## CHAPTER X.

### OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

Any Mag.  
Uncog.  
Summons.  
Bailable.  
Not comp.

172. Whoever absconds in order to avoid being served with a summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both;

or, if the summons, notice, or order, is to attend in person or by agent, or to produce a document in a Court of Justice, with imprisonment for a term which may extend to one thousand rupees, or with both.

A WARRANT addressed to a police-officer to apprehend an offender, and to bring him before the Magistrate, is not a "summons, notice, or order" within the meaning of s. 172 of the Penal Code; and the offence of absconding by an offender, against whom a warrant has been so issued, is not punishable under that section. Such a case must be dealt with under the Criminal Procedure Code.—*Queen v. Womesh Chunder Ghose*, 5 W. R. 71; 1 Wym. 61. [Peacock, C.J., and Norman and Campbell, JJ. April 18, 1866.]

S. 172 of the Penal Code applies to a *witness* who absconds to evade service of warrant issued under ss. 188 to 190 of the Code of Criminal Procedure, while s. 183 of the latter Code applies to a *party* who absconds.—*Hossein Manjee, Prisoner*, 9 W. R. 70. [Loch and Glover, JJ. May 19, 1868.]

AN accused person, against whom a proclamation has been issued, must, until he has surrendered, be regarded as in contempt, and the Court will not entertain any application on his behalf.—*Queen v. Bisheshur Pershad*, 2 N. W. P. 441. [Morgan, C.J., and Ross, Turner, Spankie, and Turnbull, JJ. Dec. 3, 1870.]

A WARRANT addressed to a nazir by a Civil Court for the arrest of a defendant in execution of a decree is not a notice, summons, or order, within the meaning of s. 172 of the Penal Code.—*Queen v. Zahoor Ali Khan*, 4 N. W. P. 97. [Spankie, J. June 26, 1872.]

It is illegal to punish a person under s. 172 for absconding to prevent the execution of a warrant issued against him, as a warrant is neither a summons nor a notice, but is addressed to the officer required to execute it, not to the person whose attendance is required. Such a case must be dealt with under the Criminal Procedure Code.—*Queen v. Amir Jan*, 7 N. W. P. 302. [Spankie, J. May 28, 1875.]

A COLLECTOR who, in order to draw up a report for the information of Government, holds a departmental inquiry into the conduct of a tahsildar accused of extortion in the discharge of his executive duties, is authorized, under the provision of Mad. Act III. of 1869, to issue summonses for the attendance of persons whose evidence may appear to him necessary for the investigation. In order to prove the commission of an offence under s. 172 of the Penal Code, the prosecutor must show that a summons, notice, or order, has been issued, and that the accused knew, or had reason to believe, that it had been issued. To abscond to avoid the service of process which has not issued is no offence under s. 172 of the Penal Code. Absconding does not necessarily imply change of place, but may be effected by concealment. If a person, having concealed himself before process issues, continues to do so after it has issued, he absconds.—*Srinivasa Ayyangar v. Reg.*, I. L. R., 4 Mad. 393. [Turner, C.J., and Mattusami Ayyar, J. Dec. 2, 1881.]

EXCEPT as provided in ss. 477, 480, and 485 (of Act X. of 1882), no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any person for any offence referred to in s. 195 (of Act X. of 1882), when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding. Nothing in s. 576 or s. 482 (of Act X. of 1882) shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.—Crim. Pro. Code (Act X. of 1882), s. 487.

S. 195 of the new Code of Criminal Procedure (Act X. of 1882) lays down: "No Court shall take cognizance of any offence punishable under ss. 172 to 188 (both inclusive) of the Penal Code except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate . . . . The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed. When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts."

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog. :  
Summons.  
Bailable.  
Not comp.

**173.** Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding from any public servant, legally competent, as such public servant, to issue such summons, notice, or order, or intentionally prevents the lawful affixing to any place of any such summons, notice, or order, from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both : or, if the summons, notice, order, or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

✓ **REFUSING** to sign a summons by an accused person does not constitute the offence of intentionally preventing the service of a summons on himself under s. 173 of the Penal Code.—*Reg. v. Kalyá bin Fákir*, 5 Bom. H. C. R. 34. [Newton, Offg. C.J., and Tucker, J. April 15, 1868.]

**A REFUSAL** to give a receipt for a summons is not an offence under s. 173 of the Penal Code.—*In re Bhoobuneshur Dutt*, 1 L. R., 3 Cal. 621; 2 C. L. R. 80. [Markby and Mitter, JJ. Dec. 14, 1877.]

**A REFUSAL** to receive a summons is not an offence under s. 173 of the Penal Code.—*Reg. v. Punamalai*, 1 L. R., 5 Mad. 199. [Kernan and Kindersley, JJ. April 28, 1882.]

Any Mag.  
Uncog.  
Summons.  
Bailable.  
Not comp.

**174.** Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ; or, if the summons, notice, order, or proclamation, is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

#### *Illustrations.*

(a.) A, being legally bound to appear before the Supreme Court at Calcutta, in obedience to a subpoena issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(b.) A, being legally bound to appear before a Zila Judge, as a witness, in obedience to a summons issued by that Zila Judge, intentionally omits to appear. A has committed the offence defined in this section.

**THERE** is nothing in s. 219, Code of Criminal Procedure (Act XXV. of 1861), which prevents an accused person, who has forfeited his bail-bond by default of appearance, from being proceeded against under s. 179 of the Penal Code, notwithstanding that his surety has paid the penalty mentioned in the recognizance.—*Reference in the Matter of Tajvommuddy Lahoree*, Prisoner, 10 W. R. 4. [Phear and Hobhouse, JJ. June 2, 1861.]

**S. 174** of the Penal Code does not apply to the case of a defendant escaping from custody under a warrant in execution of a decree of a Civil Court.—*Reg. v. Sardar Páthu*, 1 Bom. H. C. R. 38. [Newton and Tucker, JJ. Aug. 12, 1863.]

WHERE a person disobeyed a proclamation, it was held that he was punishable under s. 174.—*Queen v. Womesh Chunder Ghose*, 5 W. R. 71; 1 Wym. 61. [Peacock, C.J., and Norman and Campbell, JJ. April 18, 1866.]

MAGISTRATES may, under the Criminal Procedure Code, issue summons for service upon witnesses beyond the limits of their districts.—*Pro.*, Aug. 18, 1866, 3 Mad. H. C. R. Ap. 5.

A MAGISTRATE can take cognizance of an offence under s. 174, Penal Code, committed against his own Court. An order of forfeiture under s. 184, Code of Criminal Procedure, if substantially legal, cannot be disturbed for an immaterial error of procedure.—*Baijoo Baul v. Gungun Misser and others*, 8 W. R. 61. [Jackson and Hobhouse, JJ. Aug. 13, 1867.] Overruled by *Queen v. Chundra Sekhur Roy*, 5 B. L. R. 100; 13 W. R. 66, *infra*.

THE Chairman of Municipal Commissioners appointed under Act XXVI. of 1850, although a public servant, is not legally competent as such to issue an order for attendance before him. *Held* accordingly that disobedience of such an order was not an offence within s. 174 of the Penal Code.—*Reg. v. Purshotam Valji*, 5 Bom. H. C. R. 33. [Newton, Offg. C.J., and Tucker, J. April 15, 1868.]

A CONVICTION under s. 174 of the Penal Code for “having intentionally omitted to attend the mahalkari’s kachahri to give evidence in a revenue-case under ss. 26 and 29 of Reg. XVII. of 1827, though the summons issued was duly served upon the accused,” was not illegal.—*Reg. v. Narainappa Comte*, 5 Bom. H. C. R. 39. [Newton, Offg. C.J., and Tucker, J. May 20, 1868.]

A CONVICTION for non-attendance in obedience to an order from a public servant, under s. 174, Penal Code, cannot be bad, unless the person summoned was legally bound to attend, and refused or intentionally omitted to attend. A witness was summoned by a Judge of a Small Cause Court to attend on a certain day to give evidence in a certain case. Before that day, however, the case was adjourned, and the witness was not served with a fresh summons or notification of the adjournment. Not having attended when the case was heard, he was fined. *Held* that, not having been re-summoned, the witness was not bound to attend.—Reference in the Case of Sreenath Ghose, 10 W. R. 33. [Jackson and Hobhouse, JJ. Sep. 8, 1868.]

BEFORE a fine can be inflicted under s. 174, Penal Code, for non-attendance, it must be proved that such non-attendance was in the nature of a wilful disobedience.—*Queen v. Ungun Lall*, 1 N. W. P. 303. [Pearson and Turner, JJ. July 2, 1869.]

IN India it is not illegal to serve a summons, notice, or order on a Sunday.—4 Mad. Jur. 347, No. 1453, 1869.

THE defendant was arrested by warrant, and was released on bail to appear before the Magistrate on a specified day. The defendant appeared on that day, but the Magistrate being unable to take up the case, a verbal order was given to the defendant to appear on the following day. This he omitted to do, and was convicted under s. 174 of the Penal Code. *Held* that the conviction was good.—*Pro.*, Jan. 18, 1870, 5 Mad. H. C. R. Ap. 15.

HELD, overruling *Baijoo Baul v. Gungun Misser and others* (8 W. R. 61), that a Magistrate cannot take cognizance of an offence under s. 174, Penal Code, committed against his own Court, but is bound, under s. 171 of the Code of Criminal Procedure, to send the case for trial before another Magistrate. The only cases under the Criminal Procedure Code in which a Sessions Judge or Magistrate can try a case in which he is himself interested pointed out.—*Queen v. Chunder Shekur Roy*, 13 W. R. 66; 5 B. L. R. 100. [Jackson and Glover, JJ. April 23, 1870.]

A MAGISTRATE cannot issue a warrant of arrest against a witness under s. 260 of the Code of Criminal Procedure, unless he is first satisfied that the witness has disobeyed a summons which was served on him. In order to make a person summoned as a witness liable under s. 174 of the Penal Code, the fact must be that he intentionally omitted to attend at the place or time mentioned in the summons, or that he wilfully departed from the place where he had attended before the time at which it was lawful for him to depart.—*Queen v. Sutherland*; *Queen v. Narain Singh*, 14 W. R. 20. [Phear and Dwarkanath Mitter, JJ. July 20, 1870.]

THE accused was convicted upon a charge that he, being summoned as a defendant in a case of trespass, left the Court without permission, and thereby disobeyed the summons. The Sub-Magistrate gave the accused a verbal order to appear when required, but

the Magistrate did not adjourn the case to any particular day. *Held* that the conviction was bad.—Pro., Dec. 22, 1870, 6 Mad. H. C. R. Ap. 10.

QUEEN v. Chunder Shekur Roy (13 W. R. 66; 5 B. L. R. 100), ruling that a Court before which an offence is committed under ch. 10 of the Penal Code cannot try the case itself, followed, notwithstanding the argument of the Sessions Judge in this case that that ruling should apply only to certain cases under ch. 10.—Chutoorbhoj Bhartihee v. Mr. Macnaghten, 15 W. R. 2. [Bayley and Mitter, JJ. Jan. 18, 1871.]

A MAHALKARI invested with the powers of a Second-class Subordinate Magistrate cannot issue a summons under s. 8 of Act XI. of 1843, nor can a person be convicted under s. 174 of the Penal Code for having disobeyed such a summons so issued.—Reg. v. Venkaji Bhaskar, 8 Bom. H. C. R. 19. [Lloyd and Kemball, JJ. April 13, 1871.]

ACCUSED was summoned as a witness in a case to be heard on 27th May. The summons was not served personally on accused, but affixed to the door of his house. On the appointed date the case was not taken up, but was adjourned by public proclamation until June 5th. On this latter date accused failed to attend. For this he was convicted of an offence under s. 174 of the Penal Code. There was no evidence that the summons had been brought to the knowledge of the accused so as to require him to attend on the first occasion. *Held* that, on the ground of there being no evidence of the commission of an offence, the conviction must be quashed. The adjournment of a trial by public proclamation is irregular and objectionable.—Pro., Aug. 1, 1871, 6 Mad. H. C. R. Ap. 29.

A MAGISTRATE, while travelling in his district, tried a case partly at a place, and then fixed Sunday next at noon for further trial of the case, to be held in another village. On the Sunday the witnesses for the defence came to the village, but at 3 p.m., instead of noon. The Magistrate, after waiting an hour beyond the time fixed, moved to the next village, and subsequently sentenced the defaulting witnesses, under s. 174 of the Penal Code, to one month's simple imprisonment. The High Court, on reference, quashed the conviction.—Queen v. Hargobind Datta Sirkar, 8 B. L. R. Ap. 12. [Jackson and Mookerjee, JJ. Aug. 14, 1871.]

A SUB-MAGISTRATE convicted certain persons, under s. 174 of the Penal Code, of disobedience to summonses issued by him as tahsildar. *Held* that the convictions under the first part of s. 174 were sustainable. Mad. Act III. of 1869 gives a tahsildar power to issue summonses.—Pro., Nov. 30, 1871, 6 Mad. H. C. R. Ap. 44.

A WARRANT issued under s. 76 of the Code of Criminal Procedure should be sealed, and should describe the person to be apprehended under it with reasonable particularity, so that there may be no difficulty in establishing his identity, and should be subscribed with the name and full official title of the Magistrate issuing it. Where a warrant was defective in all the above particulars, the prisoner apprehended under it was released by the High Court.—*In re* James Hastings, 9 Bom. H. C. R. 154. [Sargent, J. Jan. 20, 1872.]

A CONVICTION under s. 174 of the Penal Code for disobeying a verbal order of a Village-Magistrate is good.—Pro., Feb. 20, 1872, 7 Mad. H. C. R. Ap. 3.

BEFORE convicting a person under s. 174 of the Penal Code, it is necessary to prove that he had notice to appear at a certain time and place, and that he did not do so.—Shib Pershad Chuckerbutty, Petitioner, 17 W. R. 38. [Bayley and Markby, JJ. Mar. 9, 1872.]

ACCUSED was convicted, under s. 174 of the Penal Code, of disobedience to a summons addressed to him as defendant in a suit brought before the Collector under Reg. VI. of 1831. The summons did not specify the place at which his attendance was required. *Held* that on this ground the conviction was illegal.—Pro., Dec. 20, 1872, 7 Mad. H. C. R. Ap. 14.

COMPLAINANT, a batta-peon, arrested defendant on a warrant, and asked him to follow him. Defendant promised to do so, went into his house on the pretext of fetching a turban, and absconded. *Held* that a conviction under s. 174 of the Penal Code was illegal.—Pro., Jan. 5, 1875, 7 Mad. H. C. R. Ap. 43.

A COLLECTOR who, in order to draw up a report for the information of Government, holds a departmental inquiry into the conduct of a tahsildar accused of extortion in the discharge of his executive duties, is authorized, under the provision of Mad. Act III. of 1869, to issue summonses for the attendance of persons whose evidence may appear to him necessary for the investigation. In order to prove the commission of an offence under s. 172 of the Penal Code, the prosecutor must show that a summons, notice, or order, has

been issued, and that the accused knew, or had reason to believe, that it had been issued. To abscond to avoid the service of process which has not issued is no offence under s. 172 of the Penal Code. Absconding does not necessarily imply change of place, but may be effected by concealment. If a person, having concealed himself before process issues, continues to do so after it has issued, he absconds.—*Srinivasa Ayyangar v. Reg.*, 1. L. R., 4 Mad. 393. [Turner, C.J., and Muttusami Ayyar, J. Dec. 2, 1881.]

A summons should be clear and specific in its terms as to the title of the Court, the place at which, the day and the time of the day when the attendance of the person summoned is required, and it should go on to say that such person is not to leave the Court without leave, and, if the case in which he has been summoned is adjourned, without ascertaining the date to which it is adjourned. Where a summons did not mention the place at which, or the time of the day when, the attendance of the person summoned was required, *held* that such person could not lawfully be punished under s. 174 of the Penal Code for non-attendance in obedience to such summons.—*Empress v. Ram Saran*, 1. L. R., 5 All. 7. [Straight, J. July 7, 1882.]

A summons issued by a tahsildar to a village-karnam to appear and give information required for the preparation of census, jamabandi, and dawl accounts, is not within the purview of Mad. Act III. of 1869, and disobedience of such a summons is not an offence under s. 174 of the Penal Code.—*Queen v. Vanam Subramanyam*, 1. L. R., 5 Mad. 377. [Muttusami Ayyar and Tarrant, JJ. Aug. 5, 1882.] Overruled by Queen-Empress v. Subbanna, 1. L. R., 7 Mad. 197, *infra*.

THE provisions of s. 174 of the Penal Code are not in conflict with the special provisions of ss. 15 and 16 of Reg. IV. of 1816 (Mad.). In ordinary cases disobedience to the summons of a village-munsif should be dealt with under the Regulation. But if a charge is laid under the Penal Code, the Criminal Court must deal with it.—*Queen v. Ramachandrapappa*, 1. L. R., 6 Mad. 249. [Turner, C.J., and Muttusami Ayyar, J. Jan. 25, 1883.]

UNDER Mad. Act III. of 1869 Collectors and their subordinates officer may issue a summons for the purpose of any inquiry, however general, which they are empowered to make for the purposes of administration.—*Queen-Empress v. Subbanna*, 1. L. R., 7 Mad. 197. [Turner, C.J., and Kernan, Kindersley, and Muttusami Ayyar, JJ. Sep. 28, 1883.] Overrules *Queen v. Vanam Subramanyam*, 1. L. R., 5 Mad. 377, *supra*.

S. 160 of the Code of Criminal Procedure, which authorizes a police-officer making an investigation under ch. 5 of the Code to require the attendance before himself of any person (within certain limits) who appears to be acquainted with the circumstances of the case, does not empower such officer to require the attendance of an accused person to answer the complaint made against him.—*Queen-Empress v. Saminada*, 1. L. R., 7 Mad. 274. [Turner, C.J., and Kernan, Kindersley, and Muttusami Ayyar, JJ. Nov. 15, 1883.]

A MAN who, in obedience to a summons to appear and answer a criminal charge, attends a Magistrate's Court, but, finding the Magistrate not present at the time mentioned in the summons, departs without waiting for a reasonable time, is guilty of an offence under s. 174 of the Penal Code.—*Queen-Empress v. Kisan Bapu*, 1. L. R., 10 Bom. 93. [Nanabhai Haridas and Wedderburn, JJ. Aug. 18, 1885.]

ANY police-officer making an investigation under Ch. XIV. of the Code of Criminal Procedure (Information to Police, and their Powers to Investigate) may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.—Crim. Pro. Code (Act X. of 1882), s. 160.

175. Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Court in which offence committed, subject to provisions of ch. 35; or (if not committed in Court) Presy. Mag. or Mag. of 1st or 2nd class. Unconv. Summons. Bailable. Not comp.

*Illustration.*

A, being legally bound to produce a document before a Zilla Court, intentionally omits to produce the same. A has committed the offence defined in this section.

WHEN any Civil, Criminal, or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in s. 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first-class, and may send the accused in custody, or take sufficient security for his appearance before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial. Such Magistrate shall thereupon proceed according to law, and may, if he is authorised under s. 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.—Crim. Pro. Code (Act X. of 1882), s. 476.

WHEN any such offence as is described in s. 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognisance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid. Nothing in s. 443 or 444 shall be deemed to apply to proceedings under this section.—Crim. Pro. Code (Act X. of 1882), s. 480.

Presy. Mag.  
or Mag. of 1st  
or 2nd class,  
Unrecog.  
Summons.  
Bailable.  
Not comp.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner, and at the time, required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

IN this section the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code.

A PRISONER cannot be punished under s. 118, as there was no omission of an act which he was bound to perform which facilitated the commission of an offence; but he should be convicted under s. 176, Penal Code, as he was bound to report under s. 138, Act XXV. of 1861, after he was informed of the robbery.—*Government v. Kesree*, 1 Agra H. C. R. 37. [Turner, J., and Spankie, Offg. J. Dec. 21, 1866.]

THE refusal of a person to join in a dacoity does not imply a knowledge on his part of the commission of that offence, or render him liable to punishment, under s. 176 of the Penal Code, for intentional omission to give notice or information for the purpose of preventing the commission of an offence.—*Queen v. Lahai Mundul and others*, 7 W. R. 29, [Kemp and Markby, JJ. Feb. 5, 1867.]

THE karnam of a village is not bound to report the commission of offences other than those specified in s. 138 of the Criminal Procedure Code. The village-munsif is bound to report the commission of all offences committed in his village to such person and in such manner as may be most likely to be effectual for the apprehension of the offenders.—Pro., Mar. 12, 1867, 3 Mad. H. C. R. Ap. 80.

A CHARGE should distinctly set forth the particular offence in respect of which the accused either omitted to give information or gave information which he knew to be false, and it should appear precisely what his duty was in the matter.—*Queen v. Moosubroo and another*, 8 W. R. 37. [Jackson and Hobhouse, JJ. July 8, 1867.]

S. 176 of the Penal Code applies to persons upon whom an obligation is imposed by law to furnish certain information to public servants, and the penalty which the law provides is intended to apply to parties who commit an intentional breach of such obligation.—Phool Chand Brojobassee, Petitioner, 16 W. R. 35. [Kemp and Glover, JJ. July 29, 1871.]

INTENTIONAL omission is the gist of the offence of a zamindár omitting to give information regarding an offence.—Luchmun Pershad Gorgo, Petitioner, 18 W. R. 22. [Kemp and Glover, JJ. June 24, 1872.]

THE provisions of s. 90 of the Criminal Procedure Code should not be put in force against one who has omitted to give information to the police of an offence having been committed in cases where the police have actually obtained such information from other sources.—In the Matter of the Petition of Sashi Bhusan Chuckerbutty; *Empress v. Sashi Bhusan Chuckerbutty*; I. L. R., 4 Cal. 623. [Ainslie and Broughton, JJ. Dec. 17, 1878.]

K WAS convicted under s. 176 of the Penal Code of having intentionally omitted to inform the police of the presence of V, a proclaimed offender, at a certain village. It was presumed by the Court that V was a proclaimed offender, because it was proved that the property of V had been attached under the provisions of s. 88 of the Code of Criminal Procedure, 1882. *Held* that the prosecutor was bound to prove the fact of proclamation. A person legally bound to give information to the police of the presence of a proclaimed offender at a certain place ought not to be prosecuted for omitting to give such information where the police are already aware of the fact.—*In re Pandya*, I. L. R., 7 Mad. 436. [Brandit, J. April 2, 1884.]

*HELD* (*per* Priusep and Macpherson, JJ.)—It is not necessary in order to support a conviction under s. 176 of the Penal Code against a person falling within the provisions of s. 45 of the Criminal Procedure Code, for not giving information of an occurrence falling under cl. d of that section, to show that the death actually occurred on his land, when the circumstances disclosed show that a body has been found under circumstances denoting that the death was sudden, unnatural, or suspicious; the finding of the body being a fact from which a Court might reasonably infer, in the absence of evidence to the contrary, that the death took place there. *Held* (*per* Mitter, J.)—It is necessary, to secure a conviction in the latter case, to prove that the death took place or occurred in the village or on the land of the accused, and the finding of a body there does not, of itself, afford that proof.—*Matuki Misser v. Queen-Empress*, I. L. R., 11 Cal. 619. [Mitter, Macpherson, and Priusep, JJ. May 13, 1885.]

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

EVERY village-headman, village-watchman, village-police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may may obtain respecting—

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, watchman, or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(b) the resort to any place within, or the passage through, such village, of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict, or proclaimed offender;

(c) the commission of, or intention to commit, any non-bailable offence in or near such village;

(d) the occurrence therein of any sudden or unnatural death, or of any death under suspicious circumstances.

*Explanation.*—In this section "village" includes village-lands.—Crim. Pro. Code (Act X. of 1882), s. 45.



Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Summons.  
Bailable.  
Not comp.

177. Whoever, being legally bound to furnish information on any subject to any public servant, as such, furnishes, as true, information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

### Illustrations.

(a.) A, a landholder, knowing of the commission of a murder within the limit of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(b.) A, a village-watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under cl. 5, s. 7, Reg. III., 1821, of the Bengal Code,<sup>o</sup> to give early and punctual information of the above fact to the officer of the nearest police-station, wilfully misinforms the police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in this section.

IN this section the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code

To sustain a conviction under s. 177 it is not necessary to prove a fraudulent intention. It is quite sufficient if it is shown (1) that the accused was legally bound to furnish information, and (2) that he furnished as true what he either knew or believed to be false.—Weir, pp. 48-50.

VILLAGE-OFFICERS in Madras are not legally bound to furnish information on every matter connected with their duties.—Weir, p. 49.

ONE Yesu gave accused four annas to purchase a stamp for him (Yesu). The accused, on being asked his name by the stamp-collector, said, "Yesu," instead of giving his own name. Held that this amounted to the offence of giving false information under s. 177, and not to the offence of cheating by personation.—Reg. v. Raghoji bin Kanoji, 3 Bom. H. C. R. 42. [Couch, C.J., and Newton, J. Mar. 6, 1867.]

S. 177 of the Penal Code does not apply to the case of *any person* who is examined by a police-officer, making a false statement, but to cases where, by law, landholders or village-watchmen are bound to give information, and to other analogous cases of the same description.—Queen v. Luckhee Singh and others, 12 W. R. 23. [Jackson and Mitter, JJ. July 5, 1869.]

AN omission to give information that a crime has been committed does not, under s. 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation. A private individual is not bound by any law to give information of any offence which he has seen committed.—Queen v. Khadim Sheikh, 4 B. L. R. A. Cr. 7. [Loch and Glover, JJ. Nov. 23, 1869.] But see s. 44 of the Criminal Procedure Code (Act X. of 1882), *supra*, p. 117.

CERTAIN vaccinators were charged with furnishing false returns to their official superior. The Magistrate found as a fact that the returns furnished were false, but acquitted the defendants on the ground that they were not "legally bound" to furnish information

\* Repealed by Act XVII of 1862.

within the meaning of s. 177 of the Penal Code. *Held* that s. 177 embraces every case in which a subordinate may seek to impose false information upon his superior. The defendants in the present case were public servants, and part of the duties which they undertook was to make true returns to their official superior. To make false returns was therefore an offence.—*Pro.*, Dec. 21, 1871, 6 Mad. H. C. R. Ap. 48.

UNDER Act V. of 1861, a police-officer is bound to communicate information to his superior officer regarding the commission of a riot affecting the public peace, and to make an entry thereof in the diary which he is required by s. 44 of that Act to keep, and the omission to give such information brings him within the purview of s. 177 of the Penal Code.—*Syed Futtch Mahomed*, Petitioner, 21 W. R. 30. [Kemp and Glover, JJ. Jan. 17, 1874.]

To make a false entry in a diary kept by a Government servant, and sent to his official superior in pursuance of a departmental order, is an offence within the meaning of s. 177 of the Penal Code.—*Virasāmi Mudali v. Reg.*, I. L. R., 4 Mad. 144. [Kindersley and Mutusāmi Ayyar, JJ. Sep. 9, 1881.]

A PERSON attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police. *Held* that such person had not thereby committed an offence punishable under s. 177 or s. 188 of the Penal Code, or the offence of attempting to “cheat,” within the meaning of s. 415 of that Code.—*Empress v. Dwarka Prasad*, I. L. R., 6 All. 97. [Tyrrell, J. Sep. 25, 1883.]

178. Whoever refuses to bind himself by an oath “or affirmation” \* to state the truth, when required so to bind himself by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

WHEN any such offence as is described in ss. 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognisance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid. Nothing in ss. 443 or 444 shall be deemed to apply to proceedings under this section.—*Crim. Pro. Code (Act X. of 1882)*, s. 440.

UNDER s. 8 of the Oaths Act (X. of 1873), if any party to, or witness in, any judicial proceeding, offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything contained in the Oaths Act, tender such oath or affirmation to him. Under s. 12 of the Oaths Act (X. of 1873), if the party or witness refuses to make the oath or solemn affirmation referred to in s. 8 of the said Act, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ditto.

\* The words quoted have been inserted by the Oaths Act (X. of 1873), s. 15.

WHEN any such offence as is described in ss. 175, 178, 179, 180, or 228 of the Indian Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court the Court may cause the offender, whether he is an European British subject or not, to be, detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid. Nothing in ss. 443 or 444 shall be deemed to apply to proceedings under this section.—Crim. Pro. Code (Act X. of 1882), s. 440.

UNDER s. 165 of the Evidence Act (I. of 1872), a Judge has the power of asking irrelevant questions to a witness, if he does so in order to obtain proof of relevant facts; but if he asks questions with a view to criminal proceedings being taken against the witness, the witness is not bound to answer them, and cannot be punished for not answering them, under s. 179 of the Penal Code.—*Queen-Empress v. Hari Lakshman*, I. L. R., 10 Bom. 185. [Nánabhái Haridás and Wedderburn, JJ. Oct. 14, 1885.]

Court in which offence committed, subject to provisions of ch. 35; or (if not committed in Court)  
Presy. Mag. or Mag. of 1st or 2nd class.  
Uncog.  
Summons.  
Bailable.  
Not comp.

**180.** Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

WHERE, in the course of a revenue-inquiry, the accused made a deposition, but refused to sign it, it was held that such refusal did not constitute an offence punishable under s. 180.—*Mad. H. C. Rulings*, Jan. 18, 1870.

AN accused person who refuses to sign a statement made at his trial in answer to questions put by the Court commits no offence punishable under s. 180 of the Penal Code.—*Imperatrix v. Sirsápa*, I. L. R., 4 Bom. 15. [Westropp, C.J. Aug. 5, 1877.]

WHEN any such offence as is described in s. 175, 178, 179, 180, or 228, Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.—Crim. Pro. Code (Act X. of 1882), s. 480.)

If the Court in any case considers that a person accused of any of the offences referred to in s. 480 (of Act X. of 1882), and committed in its view or presence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is, for any other reason, of opinion that the case should not be disposed of under s. 480 (of Act X. of 1882), such Court, after recording the facts constituting the offence, and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate. The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in the manner hereinbefore provided.—Crim. Pro. Code (Act X. of 1882, s. 482).

Ct. of Ses., Presy. Mag., or Mag. of 1st class.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

**181.** Whoever, being legally bound by an oath "or affirmation"\* to state the truth on any subject to any public servant or other person authorized by law to administer such oath or affirmation,\* makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be

\* The words quoted have been inserted by the Oaths Act (X. of 1873), s. 15.

false, or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

S. 181 applies to cases in which the proceedings are not of a judicial character, such as proceedings before a Commissioner of Income-tax. A person is not legally bound to state the truth where the officer who administers the oath is trying a case wholly beyond his jurisdiction.—*In re Andy Chetty*, 2 Mad. H. C. R. 438. [Frere and Innes, JJ. 1865.]

THE making of a false return of service of summons is an offence punishable, not under s. 181, but under s. 193, of the Penal Code, and is cognizable by the Court of Session alone.—*Queen v. Shama Churn Roy*, 8 W. R. 27. [Jackson and Hobhouse, JJ. June 25, 1867.] But see 4 Mad. H. C. R. Ap. 18, *infra*.

A CONVICTION under s. 181, Penal Code, is good, though the offence falls within s. 193. But a sentence under s. 181, which awards no term of imprisonment, is illegal.—*Pro.*, Nov. 14, 1868, 4 Mad. H. C. R. Ap. 18. But see *Queen v. Shama Churn Roy*, 8 W. R. 27, *supra*.

WHERE a false statement is made in a stage of a judicial proceeding before a Magistrate, he ought not to convict under s. 181, but commit to the Sessions under s. 193. A conviction under s. 181 for making a false statement in a stage of a judicial proceeding was held to be illegal.—*Queen v. Nussurooddeen Shazwal*, 11 W. R. 24. [Norman and Jackson, JJ. Mar. 25, 1869.]

WHEN an offence under s. 193 of the Penal Code is established, a conviction under s. 181 is illegal. When the accused made, on solemn affirmation, a statement before an Income-tax Commissioner, which statement the accused knew, or had reason to believe, to be incorrect, it was held that such statement amounted to the offence of giving false evidence in a judicial proceeding under s. 193 of the Penal Code, and was, therefore, not cognizable by a Full-power Magistrate, as it could not be treated as constituting an offence triable under s. 181 of the Penal Code (making a false statement to a public servant).—*Reg. v. Dayalji Endarji*, 8 Bom. H. C. R. 21. [Lloyd and Kembal, JJ. April 25, 1871.]

S. 51, ch. 6 of Act I. of 1879, enacts that, "subject to such rules as may be made by the Governor-General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned," &c. According to a rule made with reference to that section, "the Collector may require every person claiming a refund under ch. 6 of the said Act, or his duly authorized agent, to make an oral deposition on oath," &c. *Held*, therefore, that the Collector himself is the officer, and no other, to whom power is given by law to make inquiries into applications for allowances for spoiled stamps, to take evidence on oath in reference thereto, and to grant or refuse such applications, and he cannot delegate his authority in the matter. *Held*, therefore, where a person had applied for a refund under ch. 6 of Act I. of 1879, and the Collector made over the application for inquiry to a Deputy Collector, that the Deputy Collector was not entitled to put the witnesses produced by the applicant on their oaths, and consequently, in reference to the statements of such witnesses, no charge under s. 181 or s. 193 of the Penal Code was sustainable.—*Empress v. Niaz Ali*, 1 L. R., 5 All. 17. [Stuart, C.J., and Straight, J. July 24, 1882.]

WHERE three persons, of whom one was a pleader, were tried together and convicted under s. 181 of the Penal Code of having made false statements on solemn affirmation about the same matter in the course of an inquiry into the conduct of the pleader under the provisions of the Legal Practitioners' Act, *held* that the conviction of the pleader was bad, as his statement was improperly taken from him on solemn affirmation. *Held* also that the trial of the three prisoners together was a grave error of procedure vitiating the trial. *Held* further that an inquiry under the Legal Practitioners' Act being a judicial proceeding, false statements on solemn affirmation made by the witnesses therein should be charged and tried separately under s. 193 of the Penal Code.—*Subba v. Queen*, 1 L. R., 6 Mad. 252. [Innes and Kernan, JJ. Feb. 23, 1883.]

## 182. Whoever gives to any public servant any information which he

False information, with intent to cause a public servant to use his lawful power to the injury of another person.

knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or

Presy. Mag. or Mag. of 1st or 2nd class. Uncoog. Summons. Bailable. Not comp.

annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

*Illustrations.*

(a.) A informs a Magistrate that Z, a police-officer, subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(b.) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

WHERE a person gives false information under the Madras Salt Act, he renders himself liable to a charge under s. 182 of the Penal Code.—*Mad. Act I. of 1882, s. 24.*

Ss. 182 and 211 of the Penal Code distinguished. The latter has been held to apply to a case of false charge in which the accused in the present case had appeared before the police, and charged the new complainant with having caused the death of the accused's child by poisoning.—*Raffee Mahomed v. Abbas Khan, 8 W. R. 67. [Jackson and Hobhouse, JJ. Sep. 3, 1867.]*

A PERSON against whom information has been falsely given with a view to his injury has a right to bring a civil action for damages with or without the consent of the public servant against whom the offence was committed, but he cannot bring a criminal charge under s. 182 or any other section of ch. 10 of the Penal Code without the permission of such public servant, the law looking upon the conduct of the person who gives the false information as an offence, not against the individual charged, but against the public servant to whom the false information was given. To constitute an offence under s. 182, Penal Code, the information given must be information which the informer knew or believed to be false, and it must be proved that he gave it with such knowledge. Thus, where A, out of malice to B, gives C, a public servant, false information intended to injure B, B cannot prosecute A criminally under s. 182 without C's consent.—*Revision of Proceedings in the Case of Moulvy Abdool Luteef, 9 W. B. 31; 5 Wym. 37. [Loch and Hobhouse, JJ. Mar. 10, 1868.]* See *Queen v. Hurree Ram, 3 N. W. P. 194, infra.*

WHERE a Deputy Magistrate instituted proceedings against a complainant and his witnesses for preferring a false charge of theft before him, it was held that he could not merely rely on the decision in the theft case, but was bound to prove the falsity of the complaint of theft in the presence of the accused.—*Queen v. Ram Dass Boistub, 11 W. R. 35. [Jackson and Markby, JJ. April 6, 1869.]*

STATEMENTS made by a prisoner for the purposes of his defence cannot be held to be "information given to a public servant" within the meaning of s. 182 of the Penal Code.—*Queen v. Daria Khan, 2 N. W. P. 128. [Turner, Offg. C.J., and Spankie, J. April 2, 1870.]*

IN a case in which a false charge was brought, a Magistrate gave the accused, A, permission under s. 195, Code of Criminal Procedure, 1882, to prosecute the complainant, B, of an offence under s. 211, Penal Code. The Magistrate tried the complaint of A as a complaint under s. 211, but he subsequently framed a charge against B under s. 182, Penal Code, and punished him under that section. Held, with reference to s. 195, Code of Criminal Procedure, 1882, that the offences under ss. 182 and 211, Penal Code, being offences under ch. 14 of the Code of Criminal Procedure, 1882, the Magistrate was wrong in framing the charge under s. 182 without obtaining the previous sanction of the Criminal Court which heard the previous complaint of B.—*Raj Kumar v. Kirti Ojha, 13 W. R. 67; 7 B. L. R. 29. [Loch and Hobhouse, JJ. April 30, 1870.]*

UNDER the above section the gist of the offence consists in the offender's intention in giving the false information. The offence is the contempt of the lawful authority of the public servant by moving him to use his authority wrongfully. It is against the public

servant that it is committed, and it is complete directly the false information is given, irrespectively of the results which may actually follow the action that may be taken upon it. The specific injury that may result to the person in respect of whom the information is given is a distinct matter. And so it was held that no ground for a complaint of giving false information to a public servant under this section exists on the part of any one but the public servant against whom the offence was committed.—*Queen v. Hurree Ram*, 3 N. W. P. 191. [Turnbull, J. July 29, 1871.] See *In re Moulvy Abdool Luteef*, 9 W. R. 31. *supra*, p. 122.

WHERE a person was accused under s. 182 of the Penal Code with having given false information to a head-constable, it was held that the provisions of s. 168 of the Code of Criminal Procedure had been sufficiently complied with, inasmuch as the lower Appellate Court stated in its judgment that "the case had been forwarded under s. 182 by the officer in charge of the District Superintendent's office"—the District Superintendent being the official superior of the head-constable.—*Queen v. Grish Chunder Sirkar*, 19 W. R. 33. [Glover and Mitter, JJ. Feb. 17, 1873.] Follows *Queen v. Ramgolah Singh*, 11 W. R. 22. But see the requirements of the corresponding section of the present law (s. 195 of the Code of Criminal Procedure, 1882), *infra*, 126.

A DEPUTY Magistrate has no power to question an order made by his superior, sanctioning a prosecution under ss. 182 and 211 of the Penal Code. Whether such sanction has been rightly or wrongly given, is a question for the accused to raise before a competent Court.—*Empress v. Irad Ally*, 1. L. R., 4 Cal. 869; 4 C. L. R. 413. [Ainslie and Broughton, JJ. April 3, 1879.]

AN offence under s. 211 of the Penal Code includes an offence under s. 182; it is therefore open to a Magistrate to proceed under either section, although, in cases of a more serious nature, it may be that the proper course is to proceed under s. 211.—*Bhookteram v. Heera Kolita*, 1. L. R., 5 Cal. 181. [Ainslie and Broughton, JJ. April 26, 1879.]

WHEN a person has instituted a charge found to be false by the police, a Magistrate, except under exceptional circumstances, is not justified, merely on a perusal of a police-report, which has found a charge made to be false, in prosecuting the person by whom such charge was preferred, summarily under s. 182 of the Penal Code, but should proceed under s. 211. When a charge is pronounced false by the police, no proceedings should be taken by a Magistrate *suo motu*, until a reasonable interval has shown that the complainant accepts the results of the investigation.—In the Matter of Russick Lal Mullick, 7 C. L. R. 382. [Garth, C.J., and Maclean, J. Nov. 17, 1880.]

S. 182 does not apply where the public servant misinformed is only competent to pass (and passes on) the information, and the power to be exercised by him cannot tend to any direct or immediate prejudice of the person against whom the information is levelled.—*Queen v. Perianan*, and *Queen v. Naraina*, 1. L. R., 4 Mad. 241. The following is a full report of these two cases: "The facts in these cases, which were referred by the District Magistrate of Salem for the orders of the High Court on the ground that the proceedings therein were illegal, are sufficiently set out, for the purpose of this report, in the judgment of the Court (Innes and Muttusami Ayyar, JJ.) Judgment: The material facts in this case are as follow: Complaint was made to the Village-Magistrate that certain persons were beaten, and that jewels, exceeding Rs. 10 in value, were taken from the persons beaten. The Village-Magistrate reported the matter at the police-station, and the station-officer, after inquiry, referred the cases as false to the Sub-Magistrate of Vaniyambadi. In doing so he asked for sanction to prosecute the complainants under s. 182 (giving false information to a public servant with intent to cause him to use his lawful power to the injury of another person). The Sub-Magistrate accorded sanction, and subsequently himself tried, convicted, and punished the accused for an offence under s. 182. The District Magistrate submits that the proceedings are illegal, on the grounds (1) that the Village-Magistrate to whom the information was given had no powers in the case; (2) that the Sub-Magistrate had no power to give sanction, as he was not the public servant to whom the information was given. We are unable to concur in the opinion of the District Magistrate. Two questions appear to us to arise on the case: 1st, is s. 182 applicable to the circumstances? and 2nd, was anything further required than what was done to render the prosecution legal? We think the words 'to use his lawful power' in s. 182 refer to some power to be exercised by the officer misinformed, which shall tend to some direct and immediate prejudice of the person against whom the information is levelled. They do not, we think, apply to such prejudice as might eventually arise in consequence of certain harmless intermediate steps to be taken by the misinformed officer, such as were taken in the present case, where all that the misinformed officer did or could do

was to pass on the information. As to the other question, we think all was done that was necessary. The public servant himself complained, which is sufficient to satisfy the requirements of the section (467, Criminal Procedure Code, corresponding with s. 195, Act X. of 1882); and if it were not so, the Village-Magistrate may be said to be subordinate to the Second-class Magistrate, and the sanction of the Second-class Magistrate would be sufficient. We shall not therefore interfere."—*Queen v. Perianan*, and *Queen v. Naraina*, I. L. R., 4 Mad. 241. [Innes and Muttusámi Ayyar, JJ. Nov. 14, 18, 1881.]

M FALSELY informed the Collector of a district that certain zamíndárs had usurped possession of certain land belonging to Government, with the intent "to give trouble to such zamíndárs, and waste the time of the public authorities." Held that, inasmuch as such information was no more than an expression of a private person's belief that the Collector might, if he chose, sustain a civil suit with success against such zamíndárs, and as, had the Collector agreed with the informant, the result would not have been that he would have used his lawful power as a Collector or as a Magistrate to the injury or annoyance of such zamíndárs, or that he would have done anything he ought not to have done, M had not committed an offence under s. 182 of the Penal Code.—*Empress v. Madho*, I. L. R., 4 All. 498. [Tyrrell, J. June 21, 1882.]

K MADE a report at a police-station accusing R of a certain offence. The police having reported to the Magistrate having jurisdiction in the matter that in their opinion the offence was not established, the Magistrate ordered the case to be "shelved." K then preferred a complaint to the Magistrate, again accusing R of the offence. The Magistrate rejected the complaint with reference to the police-report. Subsequently R, with the sanction of the police-authorities, instituted criminal proceedings against K, under s. 182 of the Penal Code, in respect of the report which he had made at the police-station, and K was convicted under that section. Held that, before proceeding against K, the Magistrate should have fully investigated and sifted his complaint for himself, and should not have abrogated the functions imposed on him by law, because the police had reported against the entertainment of the case. The views expressed in *Government v. Karimdad* (I. L. R., 6 Cal. 496) concurred in. Held also that K's conviction under s. 182 of the Penal Code was illegal, as the Magistrate had no power to entertain a complaint under that section at the instance of R, the application of s. 182 and the institution of prosecutions under it being limited to the public servant against whom the offence has been committed or to his official superior, as mentioned in s. 467 of Act X. of 1872 (or s. 195 of Act X. of 1882), and it not being intended that those provisions should be enforced at the instance of private persons. Moreover, if K's complaint was false, his offence was against R, and, not against the public servant to whom the complaint was made and fell within s. 211 of the Penal Code. Ordered that the complaint made by K should be investigated.—*Empress v. Radha Kishan*, I. L. R. 5 All. 36. [Straight, J., July 5, 1882.] Overruled by *Empress v. Gugal Kishore*, I. L. R., 8 All. 382, *infra*, p. 125. Dissented from in *Poonit Singh v. Madho Bhot*, I. L. R., 13 Cal. 270, *infra*, p. 125.

WHERE a person specifically complains that another man has committed an offence, and does so falsely with the object of causing injury to that person, he is guilty of making a false charge of an offence under s. 211 of the Penal Code, and not under s. 182.—*Empress v. Arjun*, I. L. R., 7 Bom. 184. [West and Pinhey, JJ. Nov. 2, 1882.]

J COMPLAINED to the police that she had been raped by R. The police having reported the charge to be false, criminal proceedings were instituted against her under s. 182 of the Penal Code. In the meantime J made a complaint in Court, again charging R with rape. This complaint was not disposed of, but the proceedings against her, under s. 102 of the Penal Code, were continued, and she was eventually convicted under that section. Held, setting aside the conviction, and directing that J's complaint should be disposed of, that such complaint should have been disposed of before proceedings were taken against her under s. 182.—*Empress v. Jumni*, I. L. R., 5 All. 387. [Oldfield, J. Mar. 9, 1883.]

THE accused was charged, in the alternative, by the trying Magistrate, as follows: "I, W. W. Drew, Magistrate, First Class, hereby charge you, Rámji Sájábáráo, as follows: 'That you, on or about the 18th day of October 1882, at Nandarpadá, stated that you had seen Vishnu Vaman and Máhádu Lakshman carrying teakwood from Gohe Forest to Náráyan Rámchandra, range forest officer, and on 14th February 1885 you stated on oath before the First-class Magistrate at Pen, at the trial of these persons, that you did not see where they had brought the wood from, and thereby committed an offence punishable under s. 182 or s. 193 of the Penal Code (Act XLV. of 1860) and within my cognizance; and I hereby direct that you, Rámji Sájábáráo, be tried by the said Court on the

same charge." At the trial the accused asserted the truth of the former of these two statements, and denied having made the other. The Magistrate was unable to find which of them was false, and convicted the accused, in the alternative, either under s. 182 or s. 193 of the Penal Code (Act XLV. of 1860). Held that the charge was bad in law, being an alternative charge in a form forbidden by s. 233 of the Criminal Procedure Code (Act X. of 1882), which directs that, for every distinct offence of which any person is charged, there shall be a separate charge. Nor could the accused be tried upon a charge framed in the alternative as in the form given in Sch. V-XXVIII-(4) of the Criminal Procedure Code (Act X. of 1882). For, upon the facts alleged, there was no way of charging him with one distinct offence on the ground of self-contradiction. He could not successfully be charged, under s. 193 of the Penal Code (Act XLV. of 1860), on contradictory statements, because he only made one deposition, in which there were no discrepancies; and, similarly, he could not be charged under s. 182 of the Penal Code, for he only once gave information to a public servant. Held also that, having regard to ss. 225, 232, and 537 of the Criminal Procedure Code (Act X. of 1882), the accused, convicted upon such a charge, must be held to have been misled in his defence, and his conviction and sentence reversed. In charges founded upon supposed contradictory statements every presumption in favour of the possible reconciliation of the statements must be made. Under s. 172 of the Forest Act (VII. of 1878), a forest-officer is a public servant within the meaning of the Penal Code (Act XLV. of 1860). Any information given to him with the intent mentioned in s. 182 of the Penal Code is punishable under that section, whether that information is volunteered by the informant, or is given in answer to questions put to him by that officer.—*Queen-Empress v. Rāmji Sājābārāo*, I. L. R., 10 Bom. 124. [*Nánābhāi Haridas and Wedderburn*, J.J. Sep. 7, 1885.]

A PROSECUTION under s. 182 of the Penal Code may be instituted by a private person, provided that he first obtains the sanction of the public officer to whom the false information was given, or of his official superior. *Queen v. Radha Kishan* (I. L. R., 5 All. 36) overruled. Where a specific false charge is made, the proper section for proceedings to be adopted under is s. 211 of the Penal Code.—*Queen-Empress v. Jugal Kishore*, I. L. R., 8 All. 382. [*Straight*, Offg. C.J. May 28, 1886.]

AN information was given to a police-officer in the course of which two persons were named in whose houses stolen property belonging to a certain individual would be discovered. On complaint the information was found to be false, and the accused was convicted and punished for two offences under s. 182 as affecting two different persons. Held that, although the information related to two different persons, the accused could be charged with having made only one false statement, and punished for one offence under s. 182. S. 195, Criminal Procedure Code, clearly shows that a complaint directly made by a public servant mentioned therein is quite as sufficient as his sanction. *Empress of India v. Radha Kishan* (I. L. R., 5 All. 36), *supra*, p. 124, dissented from.—*Poonit Singh v. Madho Bhot*, I. L. R., 13 Cal. 270. [*Mitter and Grant*, J.J. July 22, 1886.]

S. 182 of the Penal Code must be read as an entire section, and, when so read, it applies to those cases in which the police are induced, upon information supplied to them, to do or omit to do something which might affect some third person, and which they would not have done had they known the truth of the matter laid before them. The facts of the case appear in the following judgment, which is reproduced in full: "*Petheram, C.J.*—We think that this rule must be made absolute to set aside the conviction. The facts of the case are that a person went on one occasion and informed the police that he had been robbed in the street of a shawl, but in the statement which he made to the police he did not indicate any particular person or describe any person in such a way as by any possibility could be supposed to implicate any one as the person who committed the robbery. All he said was that he was robbed by a person whom he did not see. So that in the statement that he made he did not say anything to cast suspicion on any one in particular. Under these circumstances, there was no offence within the meaning of s. 182 of the Penal Code. That section provides that if any person gives any information to a public servant with the intention of inducing him to put his powers in force to the injury or annoyance of any person, or to do or omit anything which such public servant would not have done or omitted to do if the true state of facts respecting which such information was given had been known to him, shall be punished in a certain way there specified. As it seems to us, that section must be read as a whole, and, taken as a whole, we think it applies to those cases in which the police are induced, upon the information supplied to them, to do or omit to do something which might affect some third person, and which they would not have done if they had known the true state of things. Upon the information which was given to these police-constables, all that they could be justified in doing



was to examine the informant as to what had happened to him, and then make such inquiries as the result of that examination might render desirable, but they would have no right to interfere with any one or search any one's house, because there were no circumstances brought to their knowledge by the information which this man gave which entitled them to suppose that any particular individual was guilty of any offence. Under the circumstances the most that the statement of the accused amounts to is, that it was untrue, and was made for the purpose of hoaxing the police. No doubt, that is a very wrong thing for any man to do. In the first place it is wrong to tell lies, and in the second place it is extremely wrong to take up the time of Government servants by putting them to useless inquiries under circumstances of this kind; but I do not think myself that such conduct comes within the meaning of this section, or amounts to any thing more than a hoax, for which no punishment is provided by the Code. Under these circumstances, we cannot make a crime when it is not made one by the Code, or provide a punishment for it. The rule will therefore be made absolute to set aside the conviction; the prisoner will be discharged.—In the Matter of Petition of Golan Ahmed Kasi, I. L. R., 14 Cal. 314. [Petheram, C.J., and Beverley, J. Feb. 19, 1887.]

S. 195 of the Criminal Procedure Code (Act X. of 1882) runs as follows :

195. No Court shall take cognizance—

(a) of any offence punishable under ss. 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate;

(b) of any offence punishable under s. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

(c) of any offence described in s. 463, or punishable under ss. 471, 475, or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no such sanction shall remain in force for more than six months from the date on which it was given.

For the purposes of this section, every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

**183.** Whoever offers any resistance to the taking of any property by

<p>Resistance to taking of property by lawful authority of public servant.</p>	<p>the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.</p>
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AN officer, subordinate to an officer in charge of a police-station, who was deputed by the latter to make an inquiry under s. 135 of the Code of Criminal Procedure, attempted, without a search-warrant, to enter a house in search of property alleged to have been stolen, and was obstructed and resisted. *Held* (applying s. 99 of the Penal Code) that, even though the police-officer was not strictly justified in searching the house without a warrant, the person obstructing and resisting could not set up the illegality of the officer's proceeding as a justification of his obstruction, as it was not shown that that officer was acting otherwise than in good faith and without malice. A Magistrate acting judicially should not import into the case before him his previous knowledge of the character of the

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accused, but should determine his guilt or innocence upon the evidence given in the case.—*Reg. v. Vyankatrāv Shrinivās*, 7 Bom. II. C. R. 50. [Gibbs and Melvill, JJ. June 15, 1870.]

If a bailiff break the doors of a third person in order to execute a decree against a judgment-debtor, he is a trespasser if it turn out that the person or goods of the debtor are not in the house; and under such circumstances the owner of the house does not, by obstructing the bailiff, render himself punishable under s. 183 or s. 186 of the Penal Code. The accused was convicted, under s. 183, Penal Code, of obstructing a bailiff, who broke upon the doors of the accused (a third party) to execute a decree against a judgment-debtor. The Bombay High Court, in quashing the conviction, made the following observations: "Now, in the present case, there is no evidence whatever that there were any goods of the debtor in the house of the accused Gazi; and, in the absence of such evidence, the presumption must be in her favour that there were no such goods. As there was no such property in the house, Gazi did not offer any resistance to the taking of any property by the lawful authority of a public servant, which is the offence of which she has been convicted under s. 183. Nor could she be convicted under what would appear to be a more appropriate section, namely, s. 186, for voluntarily obstructing a public servant in the discharge of his public function; for the bailiff would have been exceeding his functions if he had done that which Gazi prevented him from doing."—*Reg. v. Gazi Kom Abā Dorā*, 7 Bom. H. C. R. 83. [Gibbs and Melvill, JJ. July 28, 1870.] But see cl. 1 of s. 99 of the Penal Code, which says that "there is no right of private defence against an act done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law."

THE pay of G, a servant of a Railway Company, fell due on the 1st April. On the 31st March, the Civil Court granted a prohibitory order under Act VIII. of 1859 attaching G's pay, and the order was served on the Auditor of the Company on the 1st April. The Auditor returned the order, having endorsed on it that it was dated March 31st, and G's pay was not due till the 1st April. The order was again served on the 1st April, and the Auditor again returned it with the remark that since the first service the pay due to G had been made over to him. The Auditor was convicted under s. 183 for resisting the taking of property by the lawful authority of a public servant. *Held* that the conviction was bad under s. 183, and could not be sustained under s. 186, as on the 31st March there was no debt due to G on which the prohibitory order could operate, and the Auditor was therefore not bound to obey such an order.—*Lightfoot v. Crown*, Panj. Rec., No. 9 of 1874.

A person was convicted under s. 183 of the Penal Code for offering resistance to the attachment of property by a public servant. The offence was committed on the 4th of February 1883, but the warrant under which the public servant acted was returnable on or before the previous day. *Held* that the conviction was bad—*Anand Lal Bera v. Em-press* on the prosecution of Azim Peon, I. L. R., 10 Cal. 18; 13 C. L. R. 209. [Prinsep and Tottenham, JJ. Aug. 2, 1883.]

**184.** Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

*Presy. Mag. or Mag. of 1st or 2nd class. Unconv. Summons. Bailable. Not comp.*

A is charged, under s. 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.—*Crim. Pro. Code* (Act X. of 1882), s. 221, *illus. d.*

**185.** Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either descrip- *Ditto.*

tion for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

WHERE the lease of a ferry was put up to auction, and the accused gave a mock-bid, it was held that he was rightly convicted under s. 186.—5 Rev., Jud., and Pol. Jour., Cal., p. 38.

A PERSON is guilty of contempt of the lawful authority of a public servant under s. 185 by bidding at an auction-sale held by a Magistrate and failing to complete the sale.—*Queen v. Reazooddeen and others*, 3 W. R. 38. [Loch and Beton-Karr, JJ. June 24, 1865.]

**186.** Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

ESCAPING from lawful custody is not obstructing a public servant in the discharge of his public functions within the meaning of s. 186 of the Penal Code. Escaping from lawful custody is punishable under s. 224 of the Penal Code.—*Reg. v. Poshú bin Dhambáji Pátlí*, 2 Bom. H. C. R. 128. [Couch, C.J., and Newton and Warden, JJ. Jan. 25, 1865.]

CONVICTION under s. 186 of the Penal Code, of obstructing a mauzadár in the discharge of his duty, reversed, there being nothing to show that the mauzadár is a public servant.—*Joynath v. Soorjaram*, 8 W. R. 66. [Jackson and Hobhouse, JJ. Sep. 3, 1867.]

CONVICTION and sentence under s. 186 of the Penal Code reversed, as the conduct of the accused—refusing to accompany a measuring-clerk employed under Bom. Act I. of 1865 to his (the accused's) house, and permit it to be measured—did not constitute the offence of obstructing a public servant in discharging his public functions. *Quære*.—Whether s. 11 of Bom. Act I. of 1865 justifies surveyors in entering private houses for the purpose of measuring them.—*Reg. v. Bhagtidás*, 5 Bom. H. C. R. 51. Newton and Tucker, JJ. July 1, 1868.]

A MOFUSSIL Small Cause Court has no jurisdiction to punish for resistance of a process which it has issued, but such resistance being an offence under s. 186, it may send the accused before a Magistrate to be dealt with according to law.—*Rule Nisi in the Case of Monee Chunder Doss and others*, 11 W. R. 62, Civ. Rul. [Bayley and Hobhouse, JJ. Jan. 26, 1869.]

If a bailiff break the doors of a third person in order to execute a decree against a judgment-debtor, he is a trespasser if it turn out that the person or goods of the debtor are not in the house; and under such circumstances the owner of the house does not, by obstructing the bailiff, render himself punishable under s. 183 or s. 186 of the Penal Code.—*Reg. v. Gazi Kom Abá Dore*, 7 Bom. H. C. R. 83. [Gibbs and Melvill, JJ. July 28, 1870.] But see cl. 1 of s. 99 of the Penal Code, which says that "there is no right of private defence against an act done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law."

✓ THE refusal of a cart-owner to give his cart on hire to a Government officer does not constitute the offence of obstructing a public servant in the discharge of his public functions within the meaning of s. 186 of the Penal Code.—*Reg. v. Dhori Kullán*, 9 Bom. H. C. R. 165. [Melvill and Kemball, JJ. Feb. 8, 1872.]

✓ WHERE accused refused to allow the attachment of his property in execution of a decree passed against him by the Cantonment Small Cause Court, held that the Judge of the Court had not jurisdiction as a Magistrate to try and convict accused of an offence under s. 186.—*Empress v. Khushala*, Panj. Rec., No. 22 of 1879.]

THE resistance of a process of a Civil Court is punishable, under the Code of Criminal Procedure, by a Criminal Court; and such an offence is punishable under s. 186 of the Penal Code.—*Reg. v. Bhagai Duffadar* and another (10 W. R. 43; 2 B. L. R. 21 F. B.); overruling *Reg. v. Chunder Kant Chuckerbutty* (9 W. R. 63), where it was held that the Civil Court, and not the Magistrate, had jurisdiction to fine for resisting a process of a Civil Court. The case of *Reg. v. Bhagai Duffadar* has been followed in that of *Mani Chandra Das* (2 B. L. R., A. C. J., 188, in which a Judge of a Small Cause Court in the Mofussil found a judgment-debtor guilty of resisting an officer of the Court in

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attaching property in satisfaction of the decree, and fined him; but the High Court held that the Judge had acted without jurisdiction; he ought to have sent the judgment-debtor before the Magistrate.

**187.** Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with or guilty of an offence or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

*Omission to assist public servant when bound by law to give assistance.*

*Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.*

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

A MAGISTRATE directed a landholder "to find a clue" in a case of theft "within fifteen days, and to assist the police." Held that such order was not authorized by ss. 90 and 91 of Act X. of 1872 (corresponding with ss. 43 and 42 of Act X. of 1882), and the conviction of such landholder, under ss. 187 and 188, Penal Code, for disobedience to such order, was not maintainable.—*Empress v. Bakhshi Ram and others*, I. L. R., 3 All. 201. [Pearson, J. Aug. 18, 1880.]

AN omission or neglect by a zamindár, when called upon under s. 21 of Reg. XX. of 1817 to nominate some one to fill the office of village-watchman which had become vacant, is not an offence under either s. 187 or s. 188 of the Penal Code.—*In re Kali Prosunno Ghose*, 7 C. L. R. 575. [Morris and Prinsep, JJ. Jan. 19, 1881.]

**188.** Whoever, knowing that by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

*Disobedience to order duly promulgated by public servant.*

*Ditto.*

*Explanation.*—It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

#### *Illustration.*

An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

S. 188 of the Penal Code should be read with ss. 133 to 144 of the Criminal Procedure (Act X. of 1882). For a complete list of rulings under these latter sections see my Criminal Digest, under the heading "Public Nuisance." Ss. 133 and 144 run as follows:—

WHENEVER a District Magistrate, a Sub-divisional Magistrate, or, when empowered by the Local Government in this behalf, a Magistrate of the First Class, considers, on receiving a report or other information, and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river, or channel, which is, or may be, lawfully used by the public, or from any public place, or that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall, and thereby cause injury to persons living or carrying on business in the neighbourhood, or passing by, and that, in consequence, its removal, repair, or support is necessary, or

that any tank, well, or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing, or controlling such building, substance, tank, well, or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or

to remove such goods or merchandise; or

to prevent or stop the construction of such building, or

to remove, repair, or support it; or

to alter the disposal of such substance; or

to fence such tank, well, or excavation, as the case may be; or

to appear before himself or some other Magistrate of the First or Second Class, at a time and place to be fixed by the order, and move to have the order set aside, or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

*Explanation.*—A "public place" includes also property belonging to the State, camping-grounds, and grounds left unoccupied for sanitary and recreative purposes.—Crim. Pro. Code (Act X. of 1882), s. 133.

IN cases where, in the opinion of the District Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order, stating the material facts of the case, and served in manner provided by s. 134 (of Act X. of 1882), direct any person to abstain from a certain act, or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, or danger to human life, health, or safety, or a riot or an affray. An order under this section may, in cases of emergency, or in cases where the circumstances do not admit of the serving, in due time, of a notice upon the person against whom the order is directed, be passed *ex parte*. An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place. Any Magistrate may rescind or alter any order made under this section by himself, or any Magistrate subordinate to him, or by his predecessor in office. No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health, or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.—Crim. Pro. Code (Act X. of 1882), s. 144.

THE following extract, taken from the Report of the Indian Law Commissioners, fully explains the reason for the enactment of s. 188 of the Penal Code. "We have, to the best of our ability, framed laws against acts which ought to be repressed at all times and places, or at times and places which it is in our power to define. But there are acts

which one at time and place are perfectly innocent, and which at another time or place are proper subjects for punishment; nor is it always possible for the Legislature to say at what time or at what place such acts ought to be punishable. Thus, it may happen that a religious procession, which is in itself perfectly legal, and which, while it passes through many quarters of a town, is perfectly harmless, cannot, without great risk of tumult and outrage, be suffered to turn down a particular street inhabited by persons who hold the ceremony in abhorrence, and whose passions are excited by being forced to witness it. Again, there are many Hindoo rites which in Hindoo temples and religious assemblies the law tolerates, but which could not with propriety be exhibited in a place where English gentlemen and ladies are in the habit of frequenting for purposes of exercise. Again, at a particular season hydrophobia may be common among dogs at a particular place; and it may be highly advisable that all people at that place should keep their dogs strictly confined. Again, there may be a particular place in a town which the people are in the habit of using as a receptacle for filth; in general, this practice may do no harm, but an unhealthy season may arrive when it may be dangerous to the health of the population; and under such circumstances it is evidently desirable that no person should be allowed to add to the nuisance. It is evident that it is utterly impossible for the Legislature to mark out the route of all religious processions in India, to specify all the public walks frequented by English ladies and gentlemen, to foresee in what months and in what places hydrophobia will be common among dogs, or when a particular dunghill may become dangerous to the health of a town. It is equally evident that it would be unjust to punish a person who cannot be proved to have acted with bad intentions for doing to-day what yesterday was a perfectly innocent act, or for doing in one street what it would be perfectly innocent to do in another street without giving him some notice. What we propose, therefore, is to empower the local authorities to forbid acts which these authorities consider as dangerous to the public tranquillity, health, safety, or convenience; and to make it an offence in a person to do anything which that person knows to be so forbidden, and which may endanger the public tranquillity, health, safety, or convenience. It will be observed that we do not give to the local authorities the power of arbitrarily making anything an offence. For, unless the Court, before which the person who disobeys the order is tried, shall be of opinion that he has done something tending to endanger the public tranquillity, health, safety, or convenience, he will be liable to no punishment. The effect of the order of the local authority will merely be to deprive the person who knowingly disobeys the order of the plea that he had no bad intentions. He will not be permitted to allege that, if he has caused harm or risk of harm, it was without his knowledge."

**BEFORE** a person can be legally punished for refusal to remove and reconstruct roof-drains, evidence ought to be taken whether the party has disobeyed the Magistrate's order, and that such disobedience has produced, or is likely to produce, harm.—*Queen v. Shabuckram Bukoolee and another*, 2 W. R. 32. [Kemp and Glover, JJ. Feb. 8, 1865.]

**THE** mere non-service personally of a notice to remove a nuisance is not a sufficient ground for the Court, under s. 434 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 222 of the new Code of Criminal Procedure (Act X. of 1882), to set aside the Magistrate's order, when it appears that the parties did not take the objection before the Magistrate, and that they, in fact, admitted knowledge of the existence of the notice, and sought to excuse their failure to obey it.—*Hochan v. Elliot*, 5 W. R. 4. [Seton-Karr and Macpherson, JJ. Jan. 15, 1866.]

**A** **MAGISTRATE** cannot, under s. 62, Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 144, new Code of Criminal Procedure (Act X. of 1882), in general terms, forbid two parties to use any musical instrument in the neighbourhood of each other's house, though he may forbid their doing so for the purpose of mutual annoyance.—*Ram Chunder Geer Gossain, Petitioners*, 6 W. R. 40. [Jackson and Markby, JJ. July 9, 1866.]

**HOLD** that an Assistant Magistrate, as he comes within the definition of the term "any Magistrate," was competent to pass an order under s. 62 of the Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), which contemplates circumstances under which an immediate order is urgently required, and in this respect differs from s. 188 of the Penal Code.—*Government v. Mahomed Buksh*, 1 Agra H. C. R. 23. [Turner, J., and Spinkie, Off. J. Sep. 14, 1866.]

**A** **SENTENCE** of rigorous imprisonment passed by a Magistrate, F. P., under s. 188 of the Penal Code, for disobedience to an order duly promulgated by a public servant, altered to one of simple imprisonment, as the Magistrate's finding did not show that the

case came within the latter part of the section, in which case alone the infliction of rigorous imprisonment was authorized.—*Reg. v. Ratanráo bin Mahádevráo Chaván*, 3 Bom. H. C. R. 32. [Couch, C.J., and Newton and Warden, JJ. Oct. 3, 1866.]

**HELD** that the Magistrate, as President of a Municipal Committee, has no power to issue an order forbidding as a nuisance an act not included in the rules passed under Act XXVI. of 1850.—*Government v. Sham Soonder*, 1 Agra H. C. R. 34. [Turner, J., and Spankie, Offg. J. Dec. 12, 1866.]

A MINOR, whose property was under the Court of Wards, having been fined by the Magistrate for disobedience by his servants of a lawful order duly promulgated with reference to such property, the order of the Magistrate was reversed, on the ground that the offence was not committed by the minor in person, and that the prosecution was misdirected.—*Crown v. Sirdar Dyal Singh*, Panj. Rec., No. 84 of 1866.

THE accused was fined by the Magistrate for not having closed the drain in pursuance of the verbal order of the Magistrate. **HELD** that the Magistrate should have proceeded under ch. 20 of Act XXV. of 1861 (corresponding with ch. 10 of Act X. of 1882), inasmuch as the nuisance was not one from which immediate danger was apprehended, and not under s. 62 (or s. 144 of the new Code), which empowers the Magistrate to put an immediate determination to the continuance thereof. A written order not having been given, the procedure was faulty, and therefore quashed. Only Magistrates of a District or Division can act under ch. 20, s. 308.—*Government v. Choonee Lall*, 2 Agra H. C. R. 1. [Turner, J., and Spankie, Offg. J. Jan. 16, 1867.]

CONVICTIONS and sentences for disobeying an order duly promulgated by a public servant reversed, as the Mámlatdár, who stated that he proceeded under Bom. Act V. of 1864, was not thereby empowered to make the order.—*Reg. v. Bhaú bin Vithu*, 3 Bom. H. C. R. 53. [Newton and Tucker, JJ. Jan. 17, 1867.]

IT is not a lawful order to direct a man not to leave his home without informing the lambardár of the village or the police (*Crown v. Boolakee*, Panj. Rec., No. 12 of 1868); or without a ticket-of-leave or the permission of the police.—*Crown v. Hurnam Singh*, Panj. Rec., No. 45 of 1867.

CONVICTION and sentence for disobeying an order made by a Mámlatdár, under Bom. Act V. of 1864, directing the accused to keep a gateway open, reversed, as the Mámlatdár was not empowered under that Act to make the order.—*Reg. v. Khandoji bin Tánáji*, 5 Bom. H. C. R. 21. [Couch, C.J., and Newton, J. Mar. 10, 1868.]

A CONVICTION under s. 188 of the Penal Code, of disobedience of an order duly promulgated by a public servant, will not stand where the evidence fails to show that the disobedience caused, or tended to cause, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any person lawfully employed, or that it caused, or tended to cause, danger to human life, health, or safety, or caused, or tended to cause, a riot or affray.—*Pro.*, Mar. 16, 1868, 4 Mad. H. C. R. Ap. 5.

IN a case of public nuisance under s. 290 of the Penal Code, it must be proved that injury, danger, or annoyance, has been caused either in regard to the enjoyment of property, or the exercise of a public right on the part of a portion of the community, or of any particular class of people. The fact that there is a special law to meet a particular offence (in this case, cattle-trespass) does not prevent the punishment of the offenders under the Penal Code, if an offence which could have been rightly punished under the Penal Code was established.—*Onooram v. Lamessor*; *Webster v. Keena and others*, 9 W. R. 70. [Phear and Hobhouse, JJ. May 23, 1868.]

**HELD** that an order passed by a Mámlatdár under Bom. Act V. of 1864, directing the accused to keep open a right of way to a privy, being in reality an injunction to refrain from disturbing the possession of the parties, was, therefore, within the jurisdiction of the Mámlatdár.—*Reg. v. Krihnáshet bin Náráyanshet*, 5 Bom. H. C. R. 46. [Couch, C.J., and Newton, J. June 17, 1868.]

**HELD** that a Magistrate cannot proceed to pass an order for the removal of a nuisance, under s. 308 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 133 of the new Code of Criminal Procedure (Act X. of 1882), without calling on the party to show cause why the order should not be passed against him, and without hearing the objections, even if they are filed after the time fixed for their presentation, but before he takes up the case. A Magistrate's power to fill up a tank is, by s. 308 (or s. 133 of the new Code), limited to having it fenced in; but where the tank is proved to be injurious to

the community, he may, under that section, treat it as a public nuisance, and cause it to be filled up.—In the Case of Bistoo Chunder Chuckerbutty, 10 W. R. 27. [Lock and Glover, JJ. Aug. 13, 1868.]

S. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), does not authorize a Magistrate summarily to direct the owner of a tank in a dry bed of a river to destroy the banks on the ground that they are an obstruction to the public in the lawful enjoyment of the river, and that the stopping of the water interferes with the health of the public.—Reference in the Case of Gholam Durbesh, 10 W. R. 36. [Jackson and Hobhouse, JJ. Sep. 10, 1868.]

THE powers of a Magistrate and the procedure to be observed by him in issuing orders under ss. 62 and 308 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with ss. 144 and 133 of the new Code of Criminal Procedure (Act X. of 1882), discussed, and the difference between these sections pointed out.—In the Matter of (1) Hurimohan Malo and others; (2) Jayakrishna Mookerjee, 10 W. R. 53; 1 B. L. R. A. Cr. 20. [Phear and Hobhouse, JJ. Nov. 20, 1868.]

WHERE accused was convicted, under Act XXVI. of 1850, of disobedience of an order made by the Municipal Commissioners of Puna, and was sentenced to pay a fine of twenty rupees, and (eight days' time being allowed him within which to comply with the order) a further fine of two rupees for each day during which he should continue wilfully to disobey such order, the latter part of the sentence was reversed by the High Court as being illegal.—Reg. v. Jagannathbhat bin Appabhat, 5 Bom. H. C. R. 103. [Newton and Tucker, JJ. Dec. 3, 1868.]

ORDERS by Sub-Magistrates, in one case directing the removal of a house on the ground that it was in a dangerous and dilapidated condition, and in the other directing the removal of a granary on the ground that it had been improperly erected upon land required to be kept unoccupied for common purposes, were set aside by the High Court, because the Sub-Magistrate acted without jurisdiction.—Pro., Feb. 12, 1869, 4 Mad. H. C. R. Ap. 34.

It is competent to a Magistrate to issue an order to certain persons in possession and management of a Hindu temple to widen the door-way in order to give the necessary ventilation, and to afford proper means of ingress and egress to the pilgrims. Even if the temple were private property, the order could be passed, as the building was open to the Hindu public.—Reg. v. Ramchundra Eknath and others, 6 Bom. H. C. R. 36. [Couch, C.J., and Newton, JJ. April 21, 1869.]

THERE is nothing in s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), to justify a Magistrate in making an order for the removal of a bund, or other obstruction or nuisance, on the mere report of a police-constable; and before making such order he ought to take evidence from the defendants, and, if necessary, on both sides.—Queen v. Bhyroo Dyar Singh and others, 11 W. R. 46; 3 B. L. R. A. Cr. 4. [Norman and Jackson, JJ. May 3, 1869.]

WHERE an order, under s. 318 of the Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 145 of the new Code of Criminal Procedure (Act X. of 1882), was made between A on the one side, and B and the then tenants of B on the other, declaring that A was in possession of the property in dispute, held that this order was only binding on the actual parties to the case before the Magistrate, and that subsequent tenants of B could not be criminally punished for disobeying the order in question.—In the Matter of Gopal Burnawar, 3 B. L. R. A. Cr. 13. [Norman and Jackson, JJ. May 10, 1869.]

THE order contemplated by s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), is a particular and specific order addressed to a particular person or particular persons to do or abstain from a particular act or particular acts. That section does not empower a Magistrate to pass a general order to persons not to allow their cattle or horses to run at large on the public roads, nor can such an order be passed under Act III. of 1857, which applies only to injury done by cattle to crops, &c., and to the sides of public roads and embankments.—Queen v. Ameerruddeen and others, 12 W. R. 36; 3 B. L. R. A. Cr. 45; 6 B. L. R. 78n. [Norman and Jackson, JJ. July 26, 1869.]



A MAGISTRATE issued an order warning owners of cattle to take proper care of them, and that, in case of disobedience or neglect, they would be punished according to law, and did punish them for disobedience under s. 188 of the Penal Code. *Held* that the Magistrate was not competent under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), to pass such an order. The order contemplated under this section is in the nature of an injunction, and such an order passed by a Magistrate would not be legal. That the conviction under s. 188 of the Penal Code was illegal.—*In re Amiraddi*, 3 B. L. R. A. Cr. 45. [Norman and Jackson, JJ. July 26, 1869.]

THE power of issuing orders to prevent breaches of the peace, &c., conferred on a Magistrate by s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), extends only to immoveable property of the description set forth in ch. 22 of that Code (or ch. 12 of the new Code).—*Queen v. Goluck Chunder Gohoo*, 12 W. R. 38. [Jackson and Markby, JJ. July 27, 1869.]

AN order issued by a Magistrate under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), in consequence of a mahazirnāma signed by certain persons, but without any notice to the defendant or inquiry by the Magistrate, is illegal.—*Pro.*, Aug. 16, 1869, 4 Mad. H. C. R. Ap. 67.

BEFORE a conviction can be had under s. 188, Penal Code, it must be proved that the accused knew that an order had been promulgated by a public servant directing such accused person to abstain from a certain act.—*Queen v. Ramtonoo Singh*, 12 W. R. 49. [Kemp and Glover, JJ. Aug. 28, 1869.]

A MAGISTRATE issued a notification that all persons desirous of carrying arms should take out a license enabling them to do so under s. 26 of Act XXXI. of 1860; and certain persons were, in consequence of this notification, arrested and brought before him, charged in a police-report with carrying arms without license. No summons or warrant had been applied for, or any complaint lodged before the Magistrate, previous to the arrest of the prisoners. No charge in writing was framed as required under ss. 250, 251 of the Criminal Procedure Code (Act XXV. of 1861), corresponding with ss. 253 to 255 of the new Code of Criminal Procedure (Act X. of 1882). No evidence was taken; but the prisoners admitted carrying the fire-arms. The Magistrate convicted them, under s. 188 of the Penal Code, of disobedience to an order duly promulgated by a public servant. There was no evidence that the disobedience would cause or tend to cause annoyance, obstruction, or injury to human life, health, or safety. *Held* that the convictions must be quashed. Necessity of observing the rules laid down in the Criminal Procedure Code remarked on.—*Queen v. Nandkumar Bose*, 3 B. L. R. Ap. 149. [Markby and Glover, JJ. Sep. 14, 1869.]

S. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), does not apply to disputes connected with lands, but refers specially to nuisances and other similar matters in which immediate action is necessary in order to avoid the risk of illegal consequences.—*Rajbullub Addhya v. Gobind Chunder Moitro*, 12 W. R. 66. [Kemp and Glover, JJ. Oct. 27, 1869.]

OOMRA was convicted of stealing a heifer. Moola bought the stolen heifer from accused No. 1, and was ordered by the Deputy Commissioner to give notice of the purchase at the thana. This Moola omitted to do, and he was tried and convicted under s. 188, Penal Code. *Held* that Moola had not committed an offence under that section, as the order in question was not one which the Deputy Commissioner was lawfully empowered to promulgate within the meaning of that section.—*Oomra v. Crown*, Panj. Rec., No. 17 of 1869.

THE Sub-Magistrate issued an order to two persons, directing them to remove a certain embankment, whereby the adjacent lands of the complainant were in danger of being flooded. *Held* that the act of the defendant was not an act which could be prohibited by the Sub-Magistrate under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882).—*Pro.*, Feb. 22, 1870, 5 Mad. H. C. R. Ap. 19.

A MAGISTRATE has no power under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), to issue any order which is by its very nature irrevocable. All that he has power to compel the owner of property to do is to take certain order with it. Such power does

not extend to an order to cut down a large quantity of trees.—*Uttam Chunder Chatterjee v. Ram Chunder Chatterjee*, 13 W. R. 72; 5 B. L. R. 131. [Bayley and Markby, JJ. May 14, 1870.]

WHERE a Deputy Magistrate, without taking evidence, made an order under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), changing a day on which a *haut* used to be held, and, subsequently, on taking evidence, found that his first order was wrong and passed without jurisdiction, he was held to have acted properly in recalling his first order.—*Mohun Sirdar on behalf of Bunwarree Lall v. Obhoy Churn Mookopadyah*, Naib of Baboo Debender Nath Tagore, 13 W. R. 72. [Kemp and Jackson, JJ. May 14, 1870.]

A MAGISTRATE cannot pass an order under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), directing a person to abstain from a certain act, or to take certain order with certain property, unless he is satisfied that such direction on his part is likely to prevent, or tends to prevent, a riot or affray: nor can he pass an order under that section, or under s. 282 (= s. 107 of the new Code) or any other section of the law, calling upon a person to enter into recognizances not to collect certain cesses, though under s. 282 (or s. 107 of the new Code) the Magistrate may bind him to keep the peace, if there is sufficient evidence to show that a breach of the peace is imminent through his act.—*Luchmeeput Singh and another, Petitioners*, 14 W. R. 3. [Loch and Hobhouse, JJ. June 11, 1870.]

A MAGISTRATE cannot pass an order under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), without first calling on the defendant to show cause why the order should not be passed, and taking any evidence which the defendant may adduce.—*Rai Luchmeeput Singh*, 14 W. R. 17; 5 B. L. R. Ap. 18. [Loch and Glover, JJ. July 9, 1870.]

HELD (Phear, J., dissenting) that an order passed by a Magistrate under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), is not of the nature of a judicial proceeding, and therefore cannot be interfered with by the High Court under s. 404 of that Code (or s. 439 of the new Code).—*Abbas Ali Chowdhry (Petitioner) v. Illim Meah and others*, 14 W. R. 46; 6 B. L. R. 74. [Couch, C.J., and Bayley, Kemp, Jackson, and Phear, JJ. Aug. 17, 1870.] *Contra*: *Sheeb Chunder Bhattacharjee v. Sadut Ally Khan*, 4 W. R. 12, which has been overruled by *Bykuntram Shaha Roy v. Meajan*, 18 W. R. 47; 10 B. L. R. 431. But followed in *Sheikh Laloo v. Adam Sircar*, 17 W. R. 37, *infra*, last para.; and in *Lalla Mitterjeet Singh v. Rajcoomar Sircar*, 18 W. R. 22, *infra*, p. 136.

WHERE an order had been made by a Magistrate under s. 318 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 145 of the new Code of Criminal Procedure (Act X. of 1882), in favour of A in respect of certain land, and B subsequently obtained an order from the Collector declaring him entitled to the same land, in pursuance of which he was put into possession by an officer of the Collector, it was held that before B could be convicted under s. 188 of the Penal Code of disobeying an order made by a public officer, it should be proved that B was aware of the order under s. 318 (or s. 145 of the new Code), and that, having that knowledge, he disobeyed it.—*Abelakh Lall and others (Petitioners) v. Sirnam Singh*, 15 W. R. 50. [Jackson and Macpherson, JJ. April 14, 1871.]

WHERE a complaint was made by A that timber belonging to his master, which had been cut and stacked in a certain place, had been removed by B, who said that the timber was cut, not by A's master, but by himself, and that he had stacked it in a place where he always put his timber, it was held that the Magistrate could not proceed under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), but was bound to try the charge brought against B, and either restore the timber to A, or leave it where it was according to the result of the investigation.—*Kartick Chunder Bal v. Chunder Nath Chuckerbutty*, 15 W. R. 56. [Jackson and Mookerjee, JJ. April 24, 1871.]

THE purchaser of an interest in land at a sale in execution of a decree obtained an order for possession under s. 263 or 264, Act VIII. of 1859, and a dispute arose between him and another person, who had some interest in the land, as to what passed under the sale-certificate. Without ascertaining the rights of the parties, the Magistrate made, certain orders, the effect of which was to exclude the auction-purchaser for some time from exercising the right alleged to have passed to him under the purchase. *Held*, <sup>the</sup> <sub>that</sub>

the Magistrate ought to have made no order at all with reference to the property, leaving it to the parties to determine their rights in the Civil Court, and that he had ample power under the section to do what was necessary to prevent a breach of the peace. The High Court may interfere with and quash any order passed by a Magistrate under s. 62, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), when the order is such that it was beyond the power and out of the jurisdiction of the Magistrate to make it. *Quere.*—Whether pleaders have a right to be heard in such case.—*Sheikh Laloo v. Adam Sircar*; *Government v. Surjakant Acharjia*; *Dengoo Sheikh v. Adam Sircar* and others, 17 W. R. 37. [Bayley and Markby, J.J. Mar. 9, 1872.] Approves *Abbas Ali Chowdhry v. Illim Meah*, 14 W. R. 46, *supra*, p. 135. Dissented from in *Lalla Mitterjeet Singh v. Rajcoomar Sircar*, 18 W. R. 22, *infra*, p. 136.

AN order in writing under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), is necessary to sustain a charge under s. 188 of the Penal Code. *Quere.*—Whether a Magistrate has not power to proceed under the former section instead of under s. 308 (or s. 133 of the new Code) against a party for disobeying an order issued by him directing the party to clean a privy pronounced to be a nuisance.—*Pitambur Dey*, Petitioner, 17 W. R. 57. [Couch, C.J., and Ainslie, J. April 27, 1872.]

WHERE a new haunt was established about half a mile from a long-established market, and the Deputy Magistrate was of opinion that the holding of the two haunts on the same days of the week would induce a breach of the peace, *held* that the order passed by the Deputy Magistrate, under s. 62 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), directing petitioner to abstain from holding his haunt on certain days, was not beyond his power, or out of his jurisdiction, to pass, and therefore was one with which the High Court could not interfere under s. 404 of the Code of 1861 (or s. 439 of the Code of 1882).—*Lalla Mitterjeet Singh v. Rajcoomar Sircar*, 18 W. R. 22. [Kemp and Glover, J.J. June 25, 1872.] Dissents from *Sheikh Laloo v. Adam Sircar*, 17 W. R. 37, *supra*, p. 135. Follows *Abbas Ali Chowdhry v. Illim Meah*, 14 W. R. 46, *supra*, p. 135.

WHERE, by direction of Government, the Magistrate promulgated an order under s. 62, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144, new Code of Criminal Procedure (Act X. of 1882), directing all persons to abstain from hook-swinging or other self-torture in public, and from the abetment thereof, and no such order was upon the record, the High Court annulled the conviction of the prisoners by the Deputy Magistrate under ss. 188, 114, Penal Code, for having knowingly disobeyed that order.—*Dwarick Misser* and others, Petitioners, 18 W. R. 30. [Kemp and Glover, J.J. July 19, 1872.]

A MAGISTRATE, or other officer, exercising the powers of a Magistrate, is legally competent, under s. 62, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 144, new Code of Criminal Procedure (Act X. of 1882), to issue an order prohibiting a landholder from holding a haunt on any particular spot on his estate on particular days, on the ground that such an order is likely to prevent a riot or an affray.—*Bykunt-ram Shaha Roy v. Meajan*, 18 W. R. 47; 10 B. L. R. 434. [Couch, C.J., and Bayley, Kemp, Mitter, and Ainslie, J.J. Sep. 9, 1872.] Overrules *Sheeb Chunder Bhuttacharjee v. Saadut Ally Khan*, 4 W. R. 12.

ACCUSED was convicted, under s. 188 of the Penal Code, of exposing beef for sale in the city of Amritsar, and thereby disobeying an order duly promulgated. He was sentenced to rigorous imprisonment for two months, and his knife and scales were ordered to be confiscated. The Chief Court, on the revision side, cancelled the order of confiscation, as being unauthorized by law.—*Crown v. Imami*, Panj. Rec., No. 13 of 1872.

THE words, "or to do any act that may probably occasion a breach of the peace," in s. 282, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 107, new Code of Criminal Procedure (Act X. of 1882), were construed to mean a wrongful act, and not one which the person may lawfully do. It was not intended that a person should be prevented by a Magistrate from exercising his right of property, because another person would be likely to commit a breach of the peace, if he did so. Therefore, where a Magistrate issued an order preventing a householder from building a wall to his own house, the order was set aside as illegal.—*Kashi Chunder Dass v. Hurrikishore Dass*, 19 W. R. 47; to comp B. L. R. 441. [Couch, C.J., and Birch, J. Mar. 19, 1873.]

IN a case in which the Magistrate passed an order under s. 518, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 144, new Code of Criminal Procedure (Act X. of 1882), for closing a *haut* on the ground that it was only a mile apart from another *haut*, and a breach of the peace was not unlikely, the Sessions Judge recommended that the order should be set aside, s. 518 applying only when a breach of the peace was imminent. *Held* that, under explan. 2, s. 518, the order could be made in all cases upon such information as satisfied the Magistrate, and as the order was one which the Magistrate had power to make, and was not contrary to law, the High Court could not, under s. 297, Code of Criminal Procedure, 1872 (corresponding with s. 439, new Code of Criminal Procedure, 1882), set it aside. Orders made under s. 518 are not judicial proceedings, and therefore are not within s. 297.—*Bhola Nath Bose v. Komuruddin*, 20 W. R. 53. [Couch, C.J., and Birch, J. July 18, 1873.]

A SECOND-CLASS Magistrate, who issues an order under s. 518 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), has no jurisdiction to punish for its disobedience by reason of s. 487 of the Criminal Procedure Code (or ss. 131 and 132 of the new Code).—*Reg. v. Ranchod Dayál*, 10 Bom. H. C. R. 424. [Melvill and Nánábhái Haridás, JJ. Oct. 29, 1873.]

THE accused were convicted by the Deputy Commissioner of Rohtak, under s. 188 of the Penal Code, of disobeying an order issued by the Lieutenant-Governor, and dated 7th April 1865. Para. 3 of the order was as follows: "His Honor desires that in the case of every *kacha* road in this province, which has to support a traffic carried on carts, one side may be assigned to the carts, and one reserved for light traffic." The accused drove heavy carts on that part of a road which was set apart for light traffic. *Held* that the order of the 7th April 1865 was not legal, and the conviction could not stand.—*Crown v. Udnir*, Panj. Rec., No. 8 of 1873.

THE accused were caught fishing in the canal near Dinanager in the Gurdaspur District with nets, the meshes of which were smaller than one inch and a quarter square or six inches all round, the minimum size fixed by Financial Commissioner's Circular No. 40 of 1870. The accused did not hold licenses for fishing. The Magistrate convicted the accused under s. 188 of the Penal Code. *Held* (by Lindsay, J.) that the Financial Commissioner's Circular was not authorized by law, and the conviction must be quashed. *Held* (by Campbell, J.) that the facts did not disclose an offence under s. 188.—*Crown v. Kanhaya*, Panj. Rec., No. 11 of 1873.

THE operation of s. 518, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 144, new Code of Criminal Procedure (Act X. of 1882), is confined to cases where, in the opinion of the Magistrate, the delay which would be caused by adopting a different procedure from that specified in the explanation to that section would occasion a greater evil than that suffered by the person upon whom the order is made, or would defeat the intention of this (the 39th) chapter (or ch. 11 of the new Code). Where a Magistrate, without hearing the petitioner, or giving him an opportunity of being heard, and simply upon the foundation of a police-officer's report directed the petitioner to abstain from holding a *haut* upon his land on a certain day, because another party had long been accustomed to hold a *haut* upon his land adjacent to the petitioner's *haut* on the day following that in which the petitioner held his *haut*, it was *held* that his order passed under s. 518 was *ultra vires*, the police-officer's report being vague and insufficient, and the private interest of this kind not affording a ground for making an order under s. 518, or any other order under the Criminal Procedure Code.—*Banes Madhub Ghose v. Wooma Nath Roy Chowdhry*, 21 W. R. 26. [Phear and Morris, JJ. Jan. 18, 1874.]

THE pay of G, a servant of a Railway Company, fell due on the 1st April. On the 31st March, the Civil Court granted a prohibitory order under Act VIII. of 1859 attaching G's pay, and the order was served on the Auditor of the Company on the 1st April. The Auditor returned the order, having endorsed on it that it was dated March 31st, and G's pay was not due till the 1st April. The order was again served on the 1st April, and the Auditor again returned it with the remark that since the first service the pay due to G had been made over to him. The Auditor was convicted under s. 183 for resisting the taking of property by the lawful authority of a public servant. *Held* that the conviction was bad under s. 183, and could not be sustained under s. 188, as on the 31st March there was no debt due to G on which the prohibitory order could operate, and the Auditor was, therefore, not bound to obey such an order.—*Lightfoot v. Crown*, Panj. Rec., No. 9 of 1874.

To support a conviction under s. 188, Penal Code, there must be evidence that the order has been promulgated by a public servant lawfully empowered to promulgate such order; s. 518 of the Code (or s. 144 of the new Code), which relates to local nuisances, has no application to a case like this, which refers to the collection of market-dues.—*Queen v. Sobun Singh and others*, 23 W. R. 57. [Kemp and Birch, JJ. April 5, 1875.]

An order which declares that, as between the parties to a contention, certain land in dispute does not belong to the public, is not one the contravention of which can form the subject of an order under the Penal Code, s. 188.—*Uimoda Pershad Dutt and others v. Rancee Shama Soonduree*, 24 W. R. 20. [Glover and Mitter, JJ. June 28, 1875.]

THE extraordinary powers conferred on the High Court by the Letters Patent, s. 15, extend to the revising of orders passed under s. 518 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882). When a Magistrate makes an order under this section, on the ground that he has received information, and is satisfied with it, no interference is possible; but when he states the nature of the information, the High Court can see whether such information justifies the order made. Before a prohibitory order under s. 518 can be made, there ought to be information or evidence before the Magistrate that the act prohibited was likely to cause a riot or affray, and that the stoppage of that act would prevent such riot or affray. After summoning a person to show cause why he should not enter into a bond to keep the peace, the Magistrate cannot bind over that person until he adjudicates on evidence before him that such person is likely to commit a breach of the peace.—*Goshain Luchman Pershad Pooree and others v. Pohoop Narain Pooree*, 24 W. R. 39. [Glover and Mitter, JJ. Aug. 2, 1875.]

UNDER Act XXV. of 1861, s. 62 (or Act X. of 1882, s. 144), it is necessary that the direction should be addressed to a particular person, or particular persons, and not to the public generally, and with reference to a particular occasion only, not for a continuance.—*Pro.*, Aug. 17, 1875, 8 Mad. H. C. R. Ap. 9.

IN a civil suit to which accused was a party, the decree was that the marriage of a certain girl should be arranged for by A, another party to the suit, and that accused, her maternal uncle, should, in the meantime, have her custody only. Notwithstanding this decree, accused gave her away in marriage to B. A prosecuted accused, and the latter was convicted of disobeying a lawful order of a public servant. *Held* that the conviction could not stand.—*Crown v. Nand Lall, Panj. Rec.*, No. 3 of 1876.

A PERSON plying a boat for hire at a distance of three miles from a public ferry cannot be said, with reference to such ferry, to commit "criminal trespass" within the meaning of that term in s. 441 of the Penal Code. If, when directed by the order of a public servant, duly promulgated to him, to abstain from plying a boat for hire at or in the immediate vicinity of a public ferry, a person disobeys such direction, he renders himself liable to punishment under the Penal Code.—*Muthra v. Jawahir*, I. L. R., 1 All. 527. [Spankie, J. Dec. 15, 1877.]

WHERE a Magistrate made an order under s. 518 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), directing one of two rival haut-proprietors to remove his haut to such a distance as to render it useless for the purposes for which it was established, it was *held* that the order came within the purview of the Full Bench decision in *Gopinohun Mullick v. Taramoni Chowdhurani* (I. L. R., 5 Cal. 7; 4 C. L. R. 309), and might be set aside as in excess of jurisdiction.—*Sharut Chunder Banerjee and others v. Bamachurn Mookerjee*, 4 C. L. R. 410. [Morris and White, JJ. Mar. 19, 1879.]

A MAGISTRATE is not empowered to pass an order under s. 518 of Act X. of 1872 (corresponding with s. 144 of Act X. of 1882), which has more than a temporary operation. The grant of what is in effect an order for a perpetual injunction is entirely beyond his powers. When a plaintiff alleged that he had held a haut on his own land for many years on Tuesdays and Fridays; that the defendant had set up a rival haut on these days, and prevented persons from attending the plaintiff's haut; that this led to disturbances which ended in an order being made by the Magistrate prohibiting the plaintiff from holding his haut on the said days; and that the plaintiff suffered loss and damages in consequence, *held* that, assuming these facts to be true, the plaintiff was entitled to a decree, declaring as against the defendant that the plaintiff had a right to hold his haut on Tuesdays and Fridays.—*Gopi Mohun Mullick v. Taramoni Chowdhurani*, I. L. R., 5 Cal. 7; 4 C. L. R. 309. [Garth, C.J., and Jackson, Pontifex, Ainslie, Birch, Morris, White, Mitter, McDonell, Prinsep, Wilson, and Broughton, JJ. April 17, 1879.]

WHERE an executive officer makes an order or issues a notification under the provisions of the Code of Criminal Procedure, it is not within the province of judicial authority to question the propriety or legality of such order or notification until an attempt is made to enforce the exaction of a penalty against a person committing a breach of such order or notification. It then becomes the duty of the judicial authority to consider whether the order is properly made or not.—In the Matter of the Petition of Surjanarain Dass : *Empress v. Surjanarain Dass*, I. L. R., 6 Cal. 88. [Jackson and Tottenham, JJ. June 15, 1880.]

A MAGISTRATE directed a landholder “to find a clue” in a case of theft “within fifteen days, and to assist the police.” *Held* that such order was not authorized by ss. 90 and 91 of Act X. of 1872 (corresponding with ss. 42 and 43 of Act X. of 1882), and the conviction of such landholder, under ss. 187 and 188 of the Penal Code, for disobedience to such order, was not maintainable.—*Empress v. Bakhshi Ram*, I. L. R., 3 All. 201. [Pearson, J. Aug. 18, 1880.]

IN the absence of evidence that an order under s. 530 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 145 of the new Code of Criminal Procedure (Act X. of 1882), was, in fact, directed to the accused, he cannot legally be convicted, under s. 188 of the Penal Code for disobeying such order. *Quære*.—Whether an order under s. 530 (or s. 145 of the new Code) can be directed to others than the unsuccessful party to the proceedings under the section, or whether such an order could properly be directed to the public at large.—*In re Nobokishore Chuckerbutty*, 7 C. L. R. 291. [Mitter and Maclean, JJ. Sep. 4, 1880.]

S. 188 of the Penal Code applies to orders made by public functionaries for public purposes, and not to an order made in a civil suit between party and party. The proper remedy for disobedience of an order of injunction passed by a Civil Court is committal for contempt.—In the Matter of the Petition of Chandrakanta De, I. L. R., 6 Cal. 445; 7 C. L. R. 350. [Garth, C.J., and Maclean, J. Nov. 9, 1880.]

IN a case of a dispute between rival parties as to the payment of rents by tenants, a Magistrate has no power under s. 518 of Act X. of 1872 (corresponding with s. 144 of Act X. of 1882) to make an order that no rents should be collected until such time as the right and title of both parties should have been established by order of a competent Court, and a conviction under s. 188 of the Penal Code for disobeying such an order cannot be sustained.—*Prosunno Coomar Chatterjee v. Empress*, 8 C. L. R. 231. [Mitter and Maclean, JJ. Jan. 19, 1881.]

AN omission or neglect by a zamindár, when called upon under s. 21 of Reg. XX. of 1817 to nominate some one to fill the office of village-watchman which had become vacant, is not an offence under either s. 187 or s. 188 of the Penal Code.—In the Matter of Kali Prosunno Ghose, 7 C. L. R. 575. [Morris and Præsep, JJ. Jan. 19, 1881.]

WHERE a dispute arises as to the right of the possession of lands and buildings, a Magistrate, if he considers a collision between the parties and a serious breach of the peace imminent, may properly proceed under ch. 39, instead of ch. 40 of the Criminal Procedure Code (Act X. of 1872), corresponding with ch. 11 and ch. 12 of the new Code of Criminal Procedure (Act X. of 1882). If the Magistrate had jurisdiction, the proceedings, not being judicial, cannot be revised by the High Court. An order to abstain from interference with a temple and its property is an order to abstain from a “certain act” within the meaning of s. 518 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882).—*E. V. Ramánuja Jeeyarsvami v. V. Ramánuja Jeeyar*, I. L. R., 3 Mad. 354. [Innes and Muttusami Ayyar, JJ. Aug. 4, 1881.]

ON the 7th of June 1881, the Assistant Commissioner of Hylakandi, in Sylhet, passed an order under s. 518 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 144 of the new Code of Criminal Procedure (Act X. of 1882), that the manager of a certain tea-garden should discontinue holding a market on Thursday until further notice. On the 25th August 1881, the Assistant Commissioner reviewed this order, and, having come to the conclusion that he had no power to issue a permanent injunction, struck the case off the file, at the same time referring the matter to the Deputy Commissioner. The latter declined to interfere, informing the Assistant Commissioner that he saw no illegality in his order. Thereupon the Assistant Commissioner passed an order declaring that his order of the 7th of June 1881 remained in full force. On a reference to the High Court made by the Officiating Sessions Judge of Sylhet under s. 297 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 438 of the new Code of Criminal

nal Procedure (Act X. of 1882), *held* that the Magistrate having, on the 25th of August 1881, set aside his order of the 7th of June 1881, and struck the case off the file, he had no power to revive it without a fresh proceeding.—*Bradley v. Jameson*, I. L. R., 8 Cal. 580. [Cunningham and Tottenham, JJ. Mar. 6, 1882.]

AN order given by an officer superior in rank to an officer in charge of police-stations, commanding an assembly of five or more persons likely to cause a disturbance of the public peace to disperse, is a lawful order within the meaning of s. 480 of the Code of Criminal Procedure (Act X. of 1872), corresponding with ss. 127 to 132 of the new Code of Criminal Procedure (Act X. of 1882).—*Empress v. Tucker*, I. L. R., 7 Bom. 42. [Kemball and Pinhey, JJ. Sep. 28, 1882.]

IN affording special protection to persons assembled for religious worship or religious ceremonies, the law points to congregational rather than private worship; and it may fairly be required of congregations that they should inform the Magistrate or police at what hours they customarily assemble for worship, in order that the rights of other persons may not be unduly curtailed. No sect is entitled to deprive others for ever of the right to use the public street for processions, on the plea of the sanctity of their place of worship, or on the plea that worship is carried on therein day and night. The duties of a Magistrate in cases where the public peace is likely to be disturbed by one sect attempting to prevent another from using the public streets for procession discussed. The principles laid down in *Muthialu Chitti v. Bapun Saib* (I. L. R., 2 Mad. 140) examined, explained, and approved.—*Sundram v. Queen*, I. L. R., 6 Mad. 203. [Turner, C.J., and Innes and Kindersley, JJ. Jan. 9, 1883.]

THE accused was convicted under the Penal Code of disobedience to a general order of the Magistrate directing the public not to frequent the roads and public places at the village of P between certain hours. *Held* that the conviction was bad.—*In re Komul Kristo Bonick*, 12 C. L. R. 231. [Mitter and Field, JJ. Feb. 28, 1883.]

A DISPUTE having arisen between the Mahomedan and Hindu inhabitants of a town as to the right of the latter to carry corpses along a certain public street to the burning-ground, the Magistrate passed an order, purporting to be under s. 539 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 558 of the new Code of Criminal Procedure (Act X. of 1882), directing that the Hindus should carry corpses by the nearest route to the burning-ground, and not by the street to the use of which for such purposes the Mahomedans objected. *Held* that the order of the Magistrate was illegal.—*In re Naráyana*, I. L. R., 7 Mad. 49. [Turner, C.J., and Muttusámi Ayyar, J. May 26, 1883.]

A PERSON attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police. *Held* that such person had not thereby committed an offence punishable under s. 177 or s. 188 of the Penal Code, or the offence of attempting to "cheat," within the meaning of s. 415 of that Code.—*Empress v. Dwarka Prasad*, I. L. R., 6 All. 97. [Tyrrell, J. Sep. 25, 1883.]

ON the 29th of March 1883, the Municipal Commissioners of Commillah. at a meeting, issued an order under s. 256 of the Bengal Municipal Act of 1876. The accused was tried and convicted before the District Magistrate under s. 188 of the Penal Code, and fined Rs. 100 for having disobeyed that order. The Magistrate who tried and convicted the accused was present as Chairman of the Municipal Commissioners at the meeting of the 29th of March, when the order was passed, for disobedience of which the accused was tried and convicted. *Held* that the conviction was illegal, and must be set aside. *Sergeant v. Dale* (L. R., 2 Q. B. D. 558) cited and followed.—*Kharak Chand Pal v. Tarack Chunder Gupta*, I. L. R., 10 Cal. 1030. [Prinsep and Macpherson, JJ. Aug. 22, 1884.]

IN May 1883 the District Magistrate of Tipperah held an inquiry as to the possession of certain lands claimed by A and B, and having found on the evidence taken by him that A was in possession, he passed an order on the 21st of May 1883, declaring that A was entitled to hold possession of the disputed land until evicted in due course of law, and forbidding B and all others to disturb A's possession until such disturbance should be effected in due course of law. Previously to November 1885, B sold an eight-anna share of his interest in the disputed land to C, who at the time of his purchase had notice of the order of the 21st of May 1883. In November 1885, B and others went to the disputed lands, and attempted to turn A out of possession by force, and to compel the tenants of the lands to pay rent and give kabulyats to B and C. At the time that B and his companions went to the disputed land, the latter were aware of the order of the 21st of May 1883, though

none of them was a party to the inquiry then made by the District Magistrate. In December 1885, they were all tried and found guilty of disobedience to an order duly promulgated by a public servant. *Held* that the conviction was right. *Seemle*, that a reference by a Magistrate to a police-report, which clearly sets out the probability of a breach of the peace, is a sufficient statement of the reasons for the Magistrate's being satisfied of the existence of a dispute likely to cause a breach of the peace within the meaning of s. 145 of the Code of Criminal Procedure.—*Goluck Chandra Pal v. Kali Chandra De*, I. L. R., 13 Cal. 175. [Prinsep and Grant, JJ. April 30, 1896.]

**189.** Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Threat of injury to a public servant.* or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.*

In a prosecution for an offence under s. 189 of the Penal Code, the witnesses differed as to the exact words used by the prisoner in threatening the public servant, though they agreed as to the general effect of those words. The Magistrate, however, considered that the offence was clearly proved, and convicted the prisoner. The Sessions Judge, on appeal, affirmed the conviction, observing that it was immaterial what the words used were, and that the intention and effect of the words were plain. *Held* that the Judge was mistaken in regarding it as immaterial what the words used actually were, and that, on the contrary, it was most material that those words should be before the Court to enable it to ascertain whether in fact a threat of injury to the public servant was really made by the accused.—*Queen-Empress v. Maheshri Bakhsh Singh*, I. L. R., 8 All. 380. [Straight, Offg. C.J. May 22, 1886.]

**190.** Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Threat of injury to induce person to refrain from applying for protection to public servant.* purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Ditto.

WHERE the exercise of ecclesiastical jurisdiction is plainly *ultra vires*, or otherwise unsanctioned by the ordinances of a religious society, or where such ordinances controvert the general law, and, in either case, consequences result which the criminal law was intended to restrain, the Criminal Courts are not at liberty to decline jurisdiction. A Roman Catholic complained to a Magistrate that he had been threatened with an illegal sentence of excommunication, and had been excommunicated by the ecclesiastical authorities, with a view to prevent him from asserting his legal rights in defending a civil suit concerning the property of a church. *Held* that under the circumstances the proper course was for the Magistrate to postpone the trial till the complainant proved in a Civil Court the illegality of the action of the ecclesiastical authorities.—*In re DeCruz*, I. L. R., 8 Mad. 140. [Turner, C.J., and Brandt, J. Oct. 6 and Dec. 2, 1884.]

## CHAPTER XI.

### OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

**191.** Whoever, being legally bound by an oath, or by any express provision of law, to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

*Giving false evidence.* provision of law, to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.



*Explanation 1.*—A statement is within the meaning of this section, whether it is made verbally or otherwise.

*Explanation 2.*—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

#### *Illustrations.*

(a.) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b.) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c.) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d.) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence, whether Z was at that place on the day named or not.

(e.) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not, and which he does not believe to be, a true interpretation or translation. A has given false evidence.

**192.** Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement, may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence."

#### *Illustrations.*

(a.) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(b.) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(c.) A with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the police are likely to search. A has fabricated false evidence.

THE term "fabrication" in s. 193 refers to the fabrication of false documentary evidence to be used in a suit, so that to convict under this section it is essential to aver and to prove that the fabricated documents were intended for that purpose. The illegal concealment, by act or omission, contemplated by s. 120 of the Code, has reference to the existence of a design on the part of third persons to fabricate evidence.—*Queen v. Rajcoomar Banerjee*, 1 Ind. Jur. O. S. 105. [Trevor and Seton-Karr, JJ. Sep. 27, 1862.]

THE term of imprisonment for attempting to fabricate false evidence for the purpose of being used in a stage of judicial proceeding cannot extend beyond one-half of seven years.—*Queen v. Sundur Putnaick and another*, 3 W. R. 59. [Kemp and Seton-Kurr, JJ. Aug. 7, 1865.]

THE accused put in an application, which he verified, before a Judge of a Court of Small Causes, praying for a re-hearing of his case under s. 119, Act VIII. of 1859, and alleging that he was not aware that a suit had been instituted, or a decree given, against him, though he had authorized a pleader to defend the suit. *Held by Loch, J.*—That the accused was not guilty of an offence under s. 192 of the Penal Code, nor liable to punishment under s. 24, Act VIII. of 1859. The offence contemplated by the former law requires that the document containing the false statement should be made with the intention that it may appear in evidence. The latter law does not require that an application under s. 119, Act VIII. of 1859, such as the accused made, should be verified. *Held by Glover, J.*—*Contra.*—Revision of Proceedings in the Case of Haran Mundul, 10 W. R. 31; 2 B. L. R. A. Cr. 1. [Loch and Glover, JJ. Aug. 10, 1868.]

WHERE an accused person is charged with fabricating false evidence, it should be proved that such evidence might cause some one "to form an erroneous opinion touching any point material to the result;" and it has been held that in false declarations and certificates, the falsity must be in some material point.—*Reg. v. Damodhar Ramchandra Kulkarui*, 5 Bom. H. C. R. 68. [Newton and Tucker, JJ. Aug. 13, 1868.]

THE prisoner, a vakil, presented a vakálatnáma in the District Munsif's Court signed by the defendant in a civil suit, authorizing the prisoner to appear for the defendant. The vakálatnáma falsely purported to have been executed before the adighari of the village, and to bear the signature of the adighari. The prisoner was convicted under s. 193 of the Penal Code. *Held* that the case was not brought within the section, and that the prisoner was entitled to his discharge from custody.—*In re Keilasum Putter*, 5 Mad. H. C. R. 373. [Scotland, C.J., and Innes, J. July 11, 1870.]

A, INTENDING to procure a forged document purporting to be executed by one Chotak, applied to K to accompany A to Gorakhpur, where A said Chotak would be found, and there to draw out a bond for execution by Chotak. In pursuance of this invitation, K, believing that Chotak would execute the bond, accompanied A to Gorakhpur. A took with him his ploughman, named Chetoo, and directed Chetoo to purchase a stamp-paper for the bond, and to give his name and description to the stamp-vendor as Chotak. Chetoo complied with this direction, and the stamp-vendor wrote on the stamp-paper and endorsement to the effect that the purchaser was Chotak, with the description which would apply to that person, but, suspecting false personation, arrested Chetoo, and took him to the Magistrate. On the above facts, the Sessions Judge convicted A of attempt to forge a valuable security, and, under ss. 467 and 511, sentenced him to be rigorously imprisoned for five years. *Held* that to constitute the offence of attempt under s. 511, Penal Code, there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence. The provisions of s. 511, Penal Code, do not extend to make punishable as attempts acts done in the mere stage of preparation. Although such are doubtless done towards the commission of the offence, they are not done in the attempt to commit the offence within the meaning of the word "attempt" as used in the section.—*Queen v. Ramsarun Chowbey*, 4 N. W. P. 46. [Turner, J. Mar. 13, 1872.]

THE making up falsely of accounts with the intention of producing them before a forest-officer not empowered by law to hold an investigation and take evidence is not a fabrication of false evidence within the meaning of s. 193 of the Penal Code.—*Reg. v. Rámajiráv Jivbajrab*, 12 Bom. H. C. R. 1. [West and Nánabhái Haridas, JJ. Feb. 10, 1875.]

WHERE the petitioner was convicted of having voluntarily assisted in concealing stolen railway-pins in a certain person's house and field with a view to having such innocent person punished as an offender, *held* that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193 of the Penal Code, and of voluntarily assisting in concealing stolen property under s. 414, Penal Code.—*Empress v. Rameshar Bai*, 1 L. R., 1 All. 379. [Spankie, J. April 23, 1877.]

M INSTIGATED Z to personate C, and to purchase in C's name certain stamped paper, in consequence of which the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding. *Held* that the offence of fabricating false evidence had

been actually committed, and that M was properly convicted of abetting the commission of such offence. *Queen v. Ramsaran Chowbey* (4 N. W. P. 46) distinguished and observed on.—*Empress v. Mula*, I. L. R., 2 All. 105. [Turner, J. Jan. 24, 1879.]

WHERE the Magistrate of the district discharged an accused person upon the ground that the fabrication of false evidence by him to be used in his defence on a criminal charge was not an offence falling within s. 192, the Chief Court, on the revision side, set aside the Magistrate's order, and directed him to continue the proceedings, which his order discharging the accused had terminated.—*Empress v. Jiwan Singh*, Panj. Rec., No. 10 of 1880.

S. 35 of the Evidence Act, which provides "that any entry in an official public book, which is duly made by a public servant in the execution of his duty, is of itself a relevant fact," does not make the public book evidence to show that a particular entry has not been made in it. S. 466 of the Penal Code is not intended to apply to cases where a public officer, or a person acting for a public officer, whose duty it is to make entries in a public book, knowingly makes a false entry, but to cases where a certificate or other document is forged by some unauthorized person with a view to make it appear that it was duly issued by a public officer. The accused, in order to save an estate from forfeiture, made a false entry of rent received in a public book kept by him for the purpose of informing the Collector as to the rents which had been paid into the Collectorate and as to what estates the rents were in arrear, so that he might take steps to enforce payment, and was convicted by the Sessions Judge of an offence under s. 465 of the Penal Code. *Held*, on appeal, that the accused ought properly to have been convicted under s. 192 of the Code; the provisions of that section not being confined to false evidence to be used in judicial proceedings.—In the Matter of Juggun Lall, 7 C. L. R. 356. [Garth, C.J., and Field, J. Nov. 17, 1880.]

WHERE the date of a document, which would otherwise not have been presented for registration within time, is altered for the purpose of getting it registered, the offence committed is not forgery, where there is nothing to show that it was done "dishonestly or fraudulently," within cl. 2, s. 464 of the Penal Code, but fabricating false evidence within s. 192.—*In re Mir Ekrrar Ali*; *Empress v. Mir Ekrrar Ali*, I. L. R., 6 Cal. 482. [Garth, C.J., and Field, J. Dec. 3, 1880.]

A POLICE-OFFICER, who had suppressed a document entrusted to him to forward to his superior officer, made a false entry in his official diary that the document had been so forwarded, intending that, if he were prosecuted under the Police Act for suppressing the document, such entry might be used as evidence in his behalf that he had so forwarded the document. *Held* that, inasmuch as to constitute the offence of fabricating false evidence, defined in s. 192 of the Penal Code, the evidence fabricated must be admissible evidence, and as, if such police-officer had been prosecuted under the Police Act, the entry in the diary would not have been admissible in his behalf, though, contrary to his intention, it might have been used against him, such police-officer was improperly convicted, in respect of such entry, of fabricating false evidence punishable under s. 193 of the Penal Code. *Held* also that such police-officer's intention in making such entry being to screen himself from punishment, he was not punishable under s. 213 of the Code.—*Empress v. Gauri Shankar*, I. L. R., 6 All. 42. [Straight, J. July 24, 1883.]

L BROUGHT a suit upon a bond, and at the trial sought to support his claim by a letter fabricated probably for the purpose of enabling L to get the bond registered. L was convicted under s. 196 of the Penal Code. *Held* that, if the letter was fabricated for use before the Registrar, it was no valid objection to the conviction.—*Lakshmaji v. Queen-Empress*, I. L. R., 7 Mad. 289. [Kindersley and Hutchins, JJ. Jan. 18, 1884.]

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

*Explanation 1.*—A trial before a Court Martial or before a Military Court of Request is a judicial proceeding.

*Explanation 2.*—An investigation directed by law preliminary to a proceeding before a Court of Justice is a stage of judicial proceeding, though that investigation may not take place before a Court of Justice.

*Illustration.*

A, in an inquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence.

*Explanation 3.*—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

*Illustration.*

A, in an inquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence.

**BARGAIN TO ABSTAIN FROM PROSECUTION.**

A COURT cannot take cognizance of a bargain to abstain from the prosecution of a person who has committed such an offence as that of wilfully giving false evidence.—*Queen v. Balkishin*, 3 N. W. P. 166. [Morgan, C.J., and Turner, Spankie, and Turnbull, JJ. July 1, 1871.]

**CHARGE, FORM OF.**

THAT you, on or about the      day of      , at      , in the course of the trial of      before      , stated in evidence that “      ” which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under s. 193 of the Indian Penal Code, and within my cognizance, or the cognizance of the Court of Session (or High Court).—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXXIII.

**CHARGE IN THE ALTERNATIVE.**

THAT you, on or about the      day of      , at      , in the course of the inquiry into      before      , stated in evidence that “      ” and that you, on or about the      day of      , at      , in the course of the trial of      before      , stated in evidence that “      ” one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under s. 193 of the Indian Penal Code, and within my cognizance [or the cognizance of the Court of Session, or High Court].—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (II. 4).

**CHARGE AGAINST AND TRIAL OF TWO OR MORE PERSONS TO BE SEPARATE.**

IN cases of giving false evidence a separate charge against each prisoner must be framed, and a separate trial held of each charge.—*Pro.*, Mar. 15, 1867, 3 Mad. H. C. R. Ap. 32.

A CONVICTION for false evidence was upheld in a case where the false statement was to stop the prosecution of certain Brahmins on a charge of riot or dacoity and murder. The commitment and trial of several persons on separate charges, each man's statement forming a distinct offence, approved.—*Queen v. Bhairo Misser and others*, 7 W. R. 51. [Norman, J. April 1, 1867.]

A PERSON accused of perjury is entitled to have the specific charge made against him tried quite independently of a like charge against another person, and the Court of Session must find judicially whether all, or, if not all, which of the particular charges of perjury, where there is more than one charge, is made out against each prisoner. A conviction for perjury, moreover, should not be sustained on the bare testimony of one witness.—*Queen v. Khoab Lall and others*, 9 W. R. 66. [Phear and Hobhouse, JJ. May 12, 1868.]

A PERSON accused of giving false evidence in a stage of a judicial proceeding is entitled to have the specific charge made against him tried independently of a like charge against another person.—*Reg. v. Bhavánishankar Haribháí*, 5 Bom. H. C. R. 56. [Warden and Gibbs, JJ. July 1, 1868.]

THE commitment and trial together of several persons, who are charged with having given false evidence in the same proceedings, should be avoided.—*Queen v. Kureem and another*, 11 W. R. 16. [Jackson and Markby, JJ. Mar. 4, 1869.]

ON a charge of perjury, each of the accused should be separately charged and tried in respect of the alleged perjury.—*Queen v. Ruttee Ram*, 2 N. W. P. 21. [Turner and Spankie, JJ. Jan. 14, 1870.]

IT is wholly incorrect to charge a number of persons jointly with intentionally giving false evidence under s. 193, Penal Code. A charge under that section should show what the statement is which the accused persons or any of them are alleged to have made, and it should disclose the exact date on which the offence charged was committed, and the Court or officer before whom the false evidence was given.—*Queen v. Moharaj Missor and others*, Appellants, 16 W. R. 47: 7 B. L. R. Ap. 66. [Macpherson and Glover, JJ. Sep. 18, 1871.]

WHERE several persons are accused of having given false evidence in the same proceeding, they should be tried separately. A, S, B, D, and P, were jointly tried, A in respect of three receipts for the payments of money, produced by him in evidence in a judicial proceeding, on three charges of falsely using as genuine a forged document, and on three charges of using evidence known to be false; S, B, D, and P, on charges of giving false evidence in the same judicial proceeding as to such payments. The Court (Straight, J.), being unable to say that the accused persons had not been prejudiced in their defence by having been improperly tried together, set aside the convictions, and ordered a fresh trial of each of the accused separately.—*Empress v. Anant Ram*, 1. L. R., 4 All. 293. [Straight, J. Feb. 13, 1882.]

S. 51, ch. 6, of Act I. of 1879, enacts that, "subject to such rules as may be made by the Governor-General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, &c. According to a rule made with reference to that section, "the Collector may require every person claiming a refund under ch. 6 of the said Act, or his duly authorized agent, to make an oral deposition on oath," &c. *Held*, therefore, that the Collector himself is the officer, and no other, to whom power is given by law to make inquiries into applications for allowances for spoiled stamps, to take evidence on oath in reference thereto, and to grant or refuse such applications, and he cannot delegate his authority in the matter. *Held*, therefore, where a person had applied for a refund under ch. 6 of Act I. of 1879, and the Collector made over the application for inquiry to a Deputy Collector, that the Deputy Collector was not entitled to put the witnesses produced by the applicant on their oaths, and consequently, in reference to the statements of such witnesses, no charge under s. 181 or s. 193 of the Penal Code was sustainable. In prosecutions for giving false evidence under s. 193 of the Penal Code, the case of each person accused should be separately inquired into, and, if committed for trial, separately tried. It is wholly erroneous to include them in one joint charge. It is not of itself sufficient to warrant a conviction for giving false evidence that an accused person has made one statement on oath at one time, and a directly contradictory one at another. The charge must not only allege which of such statements is false, but the prosecutor must be prepared with confirmatory evidence independent of the other contradictory statement to establish the falsity of that which is impeached as untrue.\* *R. v. Jackson* (Lewis C. C. 6, 270), *Reg. v. Wheatland* (8 C. & P. 238), and *Rex v. Harris* (5 B. & Ald. 926), referred to. S. 455 of Act X. of 1872 (Criminal Procedure Code) is no authority for framing against a person accused of giving false evidence, who has made one statement on oath on one occasion, and a directly contradictory one on oath on another occasion, a charge in the "alternative," that word, as used in that section, meaning that, where the facts which can be proved make it doubtful what particular description of offence an accused person has committed, the charges may be so varied or alternated as to guard against his escaping conviction through technical difficulties. *Held*, therefore, where three persons were committed for trial jointly, charged with "having, on or about the 26th September 1881, or the 18th October 1881, being legally bound upon oath to state the truth, knowingly on those days,

\* Overruled by *Empress v. Ghulet*, 1. L. R., 7 All. 44, *infra*, under the heading—"Contradictory Statements—Alternative Charge."

regarding the same subject, made contradictory statements upon oath," and thereby committed an offence punishable under s. 193 of the Penal Code, and such persons were jointly tried on such charge, that such charge was bad for being single and joint against the three accused persons, instead of several and specific in regard to each of them; that it was further bad because it did not distinctly and in terms allege which of the statements was false; that, assuming a commitment upon so faulty a charge should be allowed to stand, the Court of Session should have prepared a fresh charge against each of the accused persons, specifically setting forth the statement alleged to be false, and should then have proceeded to try each of them separately; and that, there being no evidence that either of the statements made by two of such persons was false, except that it was contradicted by the other, the charge against such persons was not sustainable, there being no sufficient evidence that either of the statements was false.—*Empress v. Niaz Ali*, I. L. R., 5 All. 17. [Stuart, C.J., and Straight, J. July 24, 1882.]

WHERE three persons, of whom one was a pleader, were tried together and convicted under s. 181 of the Penal Code of having made false statements on solemn affirmation about the same matter in the course of an inquiry into the conduct of the pleader under the provisions of the Legal Practitioners' Act, *held* that the conviction of the pleader was bad, as his statement was improperly taken from him on solemn affirmation. *Held* also that the trial of the three prisoners together was a grave error of procedure vitiating the trial. *Held* further that an inquiry under the Legal Practitioners' Act being a judicial proceeding, false statements on solemn affirmation made by the witnesses therein should be charged and tried separately under s. 193 of the Penal Code.—*Subba v. Queen*, I. L. R., 6 Mad. 252. [Innes and Kernan, JJ. Feb. 23, 1883.]

#### CHARGE, NATURE OF EVIDENCE NECESSARY TO PROVE.

*HELD* by the majority of the Court (Campbell, J., dissenting) that the evidence of one witness uncorroborated is not legally sufficient for a conviction of perjury.—*Queen v. Lal Chand Cowrah Chowkeedar and others*, 5 W. R. 23; 1 Ind. Jur. N. S. 83. [Peacock, C.J., and Bayley, Norman, Pandit, and Campbell, J.J., Feb. 7, 1866.]

IN a case of giving false evidence, the strictest and most accurate proof is necessary, and the testimony of a single witness unsupported by corroborative evidence is insufficient for a conviction.—*Queen v. Mohima Chunder Chuckerbutty*, 5 W. R. 77. [Seton-Karr and Macpherson, JJ. May 7, 1866.]

COMPARISON of signatures is one kind of corroboration which would justify a conviction on the testimony of a single witness in a case of false evidence.—*Queen v. Bakhoree Chowbey*, 5 W. R. 98. [Seton-Karr, J. June 5, 1866.]

UNSATISFACTORY conviction for perjury, where the evidence was balanced as to numbers, and where the story for the prosecution was improbable, reversed.—*Queen v. Poosa Ram and others*, 6 W. R. 11. [Jackson and Markby, JJ. June 25, 1866.]

IN a case of false evidence, it is necessary to prove the deposition alleged to contain the false statement.—*Queen v. Bhakoas Tuttum*, 7 W. R. 13. [Norman, J. Jan. 14, 1867.]

A PRISONER's inability to say where his son was on the 4th Pous is no evidence on which to direct a jury to convict him of false evidence for saying that on the day previous (3rd Pous) his son was ill at home.—*Queen v. Shoikh Tufani*, 8 W. R. 26. [Jackson and Hobhouse, JJ. June 24, 1867.]

IT is essential to a charge under s. 193 of the Penal Code that the prosecution should make out that there was, on the day stated in the charge, a judicial proceeding pending, and that the prisoner in the course of that proceeding made the statement alleged to be false. The particular stage of the proceeding should be mentioned in the charge. Evidence should be given that the accused really made the statement which he is charged to have made. The knowledge by the Sessions Judge of the handwriting of the presiding officer of the Court in which the statement was made is not legal evidence of such statement having been made.—*Queen v. Futtick alias Futteali Biswas*, 10 W. R. 37; 1 B. L. R. A. Cr. 13. [Phear and Hobhouse, JJ. Sep. 10, 1868.]

THE true rule in a case of giving false evidence is that no man can be convicted of such offence except on proof of facts, which, if accepted as true, show not merely that it is incredible, but that it is impossible that the statements of the party accused made on oath can be true. If the inference from the facts proved falls short of this, there is

nothing on which a conviction can stand; because, assuming all that is proved to be true, it is still *possible* that no crime was committed.—*Queen v. Ahmed Ally and others*, 11 W. R. 25. [Norman and Jackson, JJ. April 5, 1869.]

In the case of giving false evidence under s. 193 of the Penal Code, the statement which the accused is charged with having made before the Magistrate should be clearly proved to have been made by him. The procedure in the case of a charge under this section pointed out.—*Queen v. Siddhoo*, 13 W. R. 56. [Loch and Hobhouse, JJ. April 9, 1870.]

THE evidence of one witness in cases of perjury is sufficient to establish the *factum* of the statement which is charged as being false. The measure of punishment is a matter entirely in the discretion of the Court of Session.—*Queen v. Issen Chunder Ghose Patri*, 14 W. R. 53. [Jackson and Mitter, JJ. Sep. 12, 1870.] But see rulings, *supra*.

To establish the offence of giving false evidence, direct proof of the falsity of the statement on which the perjury is assigned is essential. But, as legitimate evidence for the purpose, the law makes no distinction between the testimony of a witness directly falsifying such statement and the contradictory statement of the person charged, although not made on oath. Such a statement, when satisfactorily proved, is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence and on precisely the same ground—that it is an admission of the accused person inconsistent with his innocence. As to the weight to be given to contradictory statements, the sound rule is that a charge of perjury is not maintainable upon proof of one such statement not on oath, or more than one if proved by a single witness only, unless supported by confirmatory evidence tending to show the falsity of the statement in the charge. With respect to the kind or amount of confirmatory proof required, it must be considered in each case whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony.—*Reg. v. Ross*, 6 Mad. C. H. R. 842. [Scotland, C.J., and Innes, J. Aug. 4, 1871.]

It is a mistaken view of the law to suppose that prisoners in appeal ought to have the benefit of any doubt with reference to any portion of the evidence. The doubt shown must be of the strongest kind before the Appellate Court should be justified in interfering.—*Queen v. Ramlochan Singh and another*, 18 W. R. 15. [Kemp and Glover, JJ. June 11, 1872.]

In a case of giving false evidence, the English record written by the Magistrate was put in to prove what the accused had stated before him. The document was not interpreted to the accused in the language in which it was given, or which he understood; nor, was it read over in accordance with the requirements of s. 339, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 360, new Code of Criminal Procedure (Act X. of 1882), in the presence of the person then accused. *Held* that the English record of the Magistrate was not legal evidence under the Evidence Act (I. of 1872), s. 91, of what the prisoner said before the Magistrate. Charges of perjury ought to be based strictly upon the exact words which are used by the person who is charged; and no evidence which does not profess to give those exact words can alone be a safe foundation for a conviction.—*Queen v. Mungal Das*, 23 W. R. 28. [Phear and Morris, JJ. Jan. 28, 1875.]

In a prosecution for intentionally giving false evidence in a judicial proceeding under the Penal Code, s. 193, it is for the prosecution to show clearly that the prisoner's statements were false.—*Queen v. Sarjan Miya and others*, 25 W. R. 23. [Glover and McDonell, JJ. Feb. 28, 1876.]

WHERE the accused was charged under s. 193 of the Penal Code with having given false evidence, in that he denied having made certain statements which he was alleged to have made to the Inspector of Police, that officer was examined, and merely put in two documents containing the statements alleged as the records of what had taken place. *Held* that these documents being inadmissible in evidence under s. 119 of the Code of Criminal Procedure (Act X. of 1872), corresponding with ss. 161 and 162 of the new Code of Criminal Procedure (Act X. of 1882), evidence ought to have been given as to what was actually stated by the accused to the Inspector of Police.—*In the Matter of Sheikh Dabu*, 6 C. L. R. 47. [Tottenham and Maclean, JJ. Feb. 20, 1880.]

FAILURE to comply with the provisions of ss. 182 and 183 of Act X. of 1877 (Civil Procedure Code) in a judicial proceeding is an informality which renders the deposition of an accused inadmissible in evidence on a charge of giving false evidence based on such deposition; and, under s. 91 of Act I. of 1872 (Evidence Act), no other evidence of such

deposition is admissible.—In the Matter of the Petition of Mayadeb Gossami: *Empress v. Mayadeb Gossami*, 1. L. R., 6 Cal. 762; 8 C. L. R. 292. [Cunningham and Maclean, JJ. Feb. 22, 1881.]

NITHER the words "shall answer all questions" in s. 118 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 161 of the new Code of Criminal Procedure (Act X. of 1882), nor the words "shall be bound to answer all questions" in s. 119 of the same Code (corresponding with s. 161 of the new Code), constitute "an express provision of the law to state the truth" within the meaning of s. 191 of the Penal Code. Ss. 118 and 119 are merely intended to oblige persons to give such information as they can to the police in answer to the questions which may be put to them, and they impose no legal obligation on those persons to speak the truth.—*Empress v. Kasim Khan*, and *Empress v. Mussamat Dahin*, 1. L. R., 7 Cal. 121; 8 C. L. R. 300. [Garth, C.J., and Pontifex, Morris, Mitter, and McDonell, JJ. April 13, 1881.] But see the following ruling:

S. 161 of the Code of Criminal Procedure (Act X. of 1882) makes it obligatory on a person examined in the course of a police-investigation under ch. 14 to answer truly all questions put to him (other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture); and such person, if he knowingly answers falsely, commits the offence of giving false evidence in a stage of judicial proceeding under s. 193 of the Penal Code.—*Queen-Empress v. Parshram Raising*, 1. L. R., 8 Bom. 216. [Pinhey and Scott, JJ. Nov. 29, 1883.]

#### CHARGE, PARTICULARS TO BE SET OUT IN.

THOUGH a charge does not distinctly specify the false statement on which the evidence of perjury is attempted to be established, the omission is not material if the accused has not been prejudiced thereby.—*Queen v. Bhuttoo Laljee and another*, 2 W. R. 51. [Jackson, J. Mar. 23, 1865.]

A charge of giving false evidence should specify the false evidence which the prisoners are supposed to have given.—*Queen v. Fazul Meeah and another*, 5 W. R. 71. [Norman and Campbell, JJ. April 17, 1866.]

In charges of false evidence under s. 193, Penal Code, the charge should specifically state what words or expressions the accused is charged with having uttered, and in what respect they are supposed to be false.—*Dowlut Munshee, Appellant*, 8 W. R. 95. [Kemp and Seton-Karr, JJ. Dec. 14, 1867.]

In framing a charge for giving false evidence under s. 193 of the Penal Code, the charge should be precise, and where the accused is charged with giving false evidence on three different occasions, each occasion should form the subject of a distinct head in the charge. Amendments in a charge ought to be made formally, and should appear on the face of the record.—*Queen v. Feojdar Roy*, 9 W. R. 14. [Seton-Karr and Macpherson, JJ. Feb. 8, 1868.]

In a case of giving false evidence the charge should show the particular matter in respect of which the accused is put on his trial; and only so much of the prisoner's statement ought to be set out as is necessary in order to show the particular false statements relied on by the prosecution.—*Queen v. Soonder Mohoree*, 9 W. R. 25. [Macpherson and Jackson, JJ. Mar. 2, 1868.]

CHARGES of perjury should contain a distinct assertion with regard to *each* statement intended to be characterized as perjury, that it was made, that it is untrue in fact, and that the accused knew it to be so when he made it; and the investigation of the Court should be directed to each of those points singly. It does not follow that all contradictions on oath by opposing witnesses necessarily involve perjury, nor is the making of a document without authority always forgery.—*Queen v. Kalichurn Lahooree*, 9 W. R. 54. [Kemp and Phear, JJ. April 3, 1868.]

In a case under s. 193, as it is essential that the charge should show not only the judicial proceeding in which the prisoner is accused of having given false evidence, but the particular stage of the proceeding at which the evidence was given, the proper way to prove that the judicial proceeding took place is to produce the record thereof.—*Queen v. Futtick alias Futteali Biswas*, 10 W. R. 37; 1 B. L. R. A. Cr. 13. [Phear and Hobhouse, JJ. Sep. 10, 1868.]

A CHARGE under s. 193 should specify the judicial proceeding in a stage of which the alleged false evidence was given, and should contain the exact words as definitely and specifically as possible which constitute the false evidence.—*Mewa Singh v. Crown*, Panj. Rev., No. 36 of 1869.



A PERSON who is called upon to answer to a charge of giving false evidence should know exactly what is the false evidence imputed to him. A charge "that he, on or about the 15th April 1871, gave false evidence," is not sufficiently specific. Although the verification of plaints containing false statements is punishable according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence, still it is not quite the same thing as giving false evidence. Three separate offences should not be lumped together in a single charge, but each offence should form a separate head of charge, with reference to which there should be a distinct finding and a distinct sentence.—*Queen v. Sheo Churun*, 3 N. W. P. 314. [Pearson, J. Sep. 4, 1871.]

A MAGISTRATE, making a commitment for giving false evidence, must set out the *precise words*, recorded as used by the accused, containing the statement which he undertakes to prove false, and not state the *effect* on those words. In the High Court it is the practice to set out in the charge the substance and, as nearly as possible, the words of the statement alleged to be false. Where a charge did not distinctly set out the statement alleged to be false, but it appeared that the accused perfectly understood what was the alleged statement, and was not prejudiced in his defence, the Court refused to interfere.—*Queen v. Boodhun Ahir*, 17 W. R. 32. [Loch and Ainslie, JJ. Feb. 12, 1872.]

WHEN certain charges did not set out the exact statements made by witnesses which the Magistrate intended to prove false, but the defect was not such as to mislead the accused, the High Court declined to interfere under s. 426 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 466 of the new Code of Criminal Procedure (Act X. of 1882), but warned the Magistrate to be careful for the future.—*Queen v. Abhya Thakoor and others*, 17 W. R. 33. [Loch and Ainslie, JJ. Feb. 24, 1872.]

CHARGES of perjury ought to be based strictly upon the exact words which are used by the person who is charged; and no evidence which does not profess to give those exact words can alone be a safe foundation for a conviction.—*Queen v. Mungal Das*, 23 W. R. 28. [Phear and Morris, JJ. Jan. 28, 1875.]

S. 455 of Act X. of 1872 (corresponding with s. 236 of Act X. of 1882) applies to cases in which, not the facts are doubtful, but the application of the law to the facts is doubtful. Judgment in the alternative cannot be passed in cases in which it is doubtful whether the accused person is guilty of any one of the several offences charged, but where it is doubtful of which of those offences he is guilty. The accused persons were committed for trial under an erroneous and untenable alternative charge under s. 193 of the Penal Code. The Court of Session amended the charge under s. 193, and added charges under ss. 201 and 203. It was doubtful whether the amendment and addition were not likely to prejudice the accused in their defence. The alleged false evidence, and not its assumed substance and purport, should be set forth in a charge under s. 193.—*Queen v. Jamurha*, 7 N. W. P. 137. [Pearson, J. Feb. 4, 1875.]

#### CHARGE, WHERE THERE ARE SEVERAL FALSE STATEMENTS.

IN framing a charge for giving false evidence under s. 193 of the Penal Code, the charge should be precise, and where the accused is charged with giving false evidence on three different occasions, each occasion should form the subject of a distinct head in the charge. Amendments in a charge ought to be made formally, and should appear on the face of the record.—*Queen v. Feojdar Roy*, 9 W. R. 14. [Seton-Karr and Macpherson, JJ. Feb. 8, 1868.]

THE making of any number of false statements in the same deposition is one aggregate case of giving false evidence. Charges of false evidence cannot be multiplied according to the number of false statements contained in the depositions.—*Pro.*, May 1, 1871, 6 Mad. H. C. R. Ap. 27.

#### CIVIL COURT, FALSE EVIDENCE BEFORE.

WHEN a Civil Court directs that criminal proceedings be taken against a party to a suit before it for perjury or forgery, the High Court has no power, on an appeal being preferred against the decision of that Court, to direct that such proceedings be stayed until the appeal shall have been heard and determined.—In the Matter of the Petition of Ram Prasad Hazra, B. L. R. Sup. Vol. 426. [Peacock, C.J., and Bayley, Seton-Karr, Pundit, and Macpherson, JJ. Feb. 12, 1866.]

THE discretion vested in a Civil Court under s. 169, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 195, new Code of Criminal Procedure (Act X. of 1882), of sanctioning a criminal charge of perjury, is one that should be most carefully

exercised. Remarks on the present case, in which the discretion was improperly exercised.—*Queen v. Poosa Ram and others*, 6 W. R. 11. [Jackson and Markby, JJ. June 25, 1866.]

THE failure of the Civil Court in a case of perjury to make a memorandum of the evidence of the accused when examined before it does not vitiate the depositions, if the evidence itself was duly recorded in the language in which it was delivered in such Court.—*Behareo Lal Bose and others*, In the Case of, 9 W. R. 69. [Loch and Kemp, JJ. May 16, 1868.]

WHERE a Civil Court sends an offence under s. 193 of the Penal Code to a Magistrate for investigation and commitment, if necessary, the Magistrate cannot return the case to the Civil Court, nor can the Civil Court, after it has sent a case to the Magistrate, commit it to the Sessions. The Magistrate should himself proceed with the case, and take evidence therein.—*Queen v. Jan Mahomed*, 12 W. R. 41; 3 B. L. R. A. Cr. 47. [Kemp and Markby, JJ. Aug. 3, 1869.]

A CIVIL Court has no power to order the commitment of persons for offences under ss. 471, 465, and 193 of the Penal Code without holding the preliminary inquiry required by s. 474 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 478 of the new Code of Criminal Procedure (Act X. of 1882).—*Queen v. Ruugatoonee and others*, 22 W. R. 52. [Markby and Mitter, JJ. Aug. 5, 1874.]

ALTHOUGH s. 16 of Act XXIII. of 1861 gives Civil Courts powers similar to those conferred on Civil and Criminal Courts alike by s. 471 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 476 of the new Code of Criminal Procedure (Act X. of 1882), the whole law as to the procedure in cases within those sections is now embodied in s. 471 of the Criminal Procedure Code. In a suit brought to recover possession of certain property, the Judge decided one of the issues raised in the plaintiff's favour; but on the important issue, as to whether the plaintiff ever had possession, he found for the defendant. The plaintiff was not examined, but on the issue as to possession he called two witnesses. The Judge disbelieved their statements, and considering that the plaintiff had failed to prove his case, he gave judgment for the defendant without requiring him to give evidence on that issue. In the concluding paragraph of his judgment, the Judge directed the depositions of the two witnesses above referred to, together with the English memoranda of their evidence, to be sent to the Magistrate, with a view to his inquiring whether or not they had voluntarily given false evidence in a judicial proceeding; and he further directed the Magistrate to inquire whether or not the plaintiff had abetted the offence of giving false evidence, on the ground that, as the witnesses were the plaintiff's servants, he must personally have influenced them, and also to inquire whether the plaintiff which the plaintiff had attested contained averments which he knew to be false. On a motion to quash this order, *held* that, under s. 471 of the Criminal Procedure Code, the Judge has no power to send a case to a Magistrate, except when, after having made such preliminary inquiry as may be necessary, he is of opinion that there is sufficient ground (i. e., ground of a nature higher than mere surmise or suspicion) for directing judicial inquiry into the matter of a specific charge, and that the Judge is bound to indicate the particular statements or averments in respect of which he considers that there is ground for a charge into which the Magistrate ought to inquire, and that the order was bad, because the Judge had made no preliminary inquiry, and because it was too vague and general in its character.—In the Matter of the Petition of Baijoo Lall: *Reg. v. Baijoo Lall*, 1 L. R., 1 Cal. 450. [Macpherson and Morris, JJ. Aug. 23, 1876.]

THE power of a Civil Court to commit a case to the Court of Session, after completing the preliminary inquiry, is given by s. 474 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 478 of the new Code of Criminal Procedure (Act X. of 1882), and is restricted to the class of cases provided in that section, viz., where offences exclusively triable by a Court of Session are committed before the Civil Court. S. 471 of the Code of 1872 (or s. 476 of the Code of 1882) deals with a more extended class of cases, viz., all those mentioned in ss. 467, 468, and 469 of the Code of 1872 (corresponding with s. 195 of the Code of 1882), in which not merely a Civil Court, but any Court, Civil or Criminal, and whether possessing or not possessing the power to commit to the Court of Session, is of opinion that there is sufficient ground for holding an inquiry; and it enacts the procedure to be followed by the Court, which may elect to adopt one of two courses, that is to say, it may either commit a case to the Court of Session, if and where it has the power to do so, or, if it has not that power, or is not disposed to exercise it, it may send the case to a Magistrate having power to try, or commit for trial, the accused person for the offence charged.—*Imperatrix v. Popat Nathu*, 1 L. R., 4 Bom. 287. [Pinkey and Melvill, JJ. Dec. 17, 1879.]

## FALSE EVIDENCE, &amp;c.

SEC. 193.]

AN order made under s. 471 of Act X. of 1872 (corresponding with s. 476 of Act X. of 1882), sending a case for inquiry to a Magistrate, is not necessarily bad because the Court did not make a preliminary inquiry before making such order. The law requires only such preliminary inquiry "as may be necessary." *Held*, therefore, where a Munsif, being of opinion that both the parties to a suit tried by him had given false evidence therein on certain points, sent the case for inquiry to the Magistrate under s. 471 of Act X. of 1872, with a proceeding embodying the facts of the case, and charging the parties respectively with giving false evidence on such points, and there was nothing to show that any inquiry that the Munsif could have made was necessary or would have put the Magistrate into a better position for dealing with the case than he was in, that the Munsif's proceedings were not bad because he did not hold a preliminary inquiry.—*Empress v. Juala Prasad*, I. L. R., 5 All. 62. [Tyrrell, J. July 29, 1882.]

## COMMITMENT.

A MAGISTRATE, to whom the case of a person charged with giving false evidence in a judicial proceeding is transferred for investigation, cannot commit to the Sessions without himself recording evidence and examining the complainant and his witnesses in the presence of the accused.—*Queen v. Ramdhun Singh*, 11 W. R. 22. [Jackson and Markby, JJ. Mar. 17, 1869.]

THE Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court.—*Queen v. Hardyal*, 3 B. L. R. A. Cr. 35. [Norman and Jackson, JJ. July 13, 1869.]

A COURT of Session is competent and ought to proceed to the trial of a prisoner who is brought before it upon a charge exhibited by a Magistrate, who is authorized to make a commitment, notwithstanding any irregularity or defect of form in recording the complaint.—*Revision in the Case of Narain and another*, 14 W. R. 34; 5 B. L. R. 660. [Couch, C. J., and Bayley, Kemp, Jackson, and Phear, JJ. Aug. 23, 1870.] Overrules *Queen v. Mahim Chandra Chuckerbutty*, 3 B. L. A. Cr. 67.

THE Criminal Procedure Code does not authorize the Sessions Judge to quash a commitment on the ground of illegality. If the Sessions Judge is of opinion that the order of commitment should be annulled as illegal, he should move the High Court to annul the same.—*Queen v. Mata Dyal*, 4 N. W. P. 6. [Pearson, J. Jan. 13, 1872.]

GIVING false evidence is "an offence committed in contempt of the authority" of a Court within the meaning of s. 473 of Act X. of 1872 (corresponding with s. 487 of Act X. of 1882). *Reg. v. Nuranbeg* (10 Bom. H. C. R. 73) and the ruling in 7 Mad. H. C. R. Ap. 17 followed. *Queen v. Kultaran Singh* (I. L. R., 1 All. 129) and *Queen v. Jagat Mull*, *ibid.* 162) dissented from. Where the accused was, by a Magistrate, First Class, committed for trial by the Sessions Court on a charge of having given false evidence in a judicial proceeding before the Sessions Judge, there being no Assistant Sessions Judge or Joint Sessions Judge, *held* that the commitment could not be quashed, there being no error in law, and the case must, therefore, be transferred for trial to another Court of Session. In such a case as the above the better course would be for the Magistrate to try the case himself, and, if he is incompetent to pass a sufficient sentence, for the Sessions Judge to refer the case to the High Court for enhancement of sentence.—*Reg. v. Gaji kom Rānu*, I. L. R., 1 Bom. 311. [Melvill and Nánábhái Haridās, JJ. Aug. 24, 1876.]

L MADE a complaint against S by petition, in which he only charged S of having committed offences punishable under ss. 193 and 218 of the Penal Code, but in which he also accused S of acts which, if the accusation had been true, would have amounted to an offence punishable under s. 466 of that Code with seven years' imprisonment. The Magistrate inquired into the charges against S under ss. 193 and 218 of the Penal Code, and directed his discharge. L then applied to the Court of Session to direct S to be committed for trial on the ground that he had been improperly discharged, which the Court of Session did; and S was committed for trial charged under s. 218 of the Code, and was acquitted by the Court of Session. The Court of Session then, under s. 472 of Act X. of 1872 (corresponding with s. 477 of Act X. of 1882), charged L with offences punishable under ss. 193, 195, 211, and 211 and 109 of the Penal Code, and committed him for trial. *Held* that such commitment was not bad by reason that an offence under s. 193 of the Penal Code is not exclusively triable by a Court of Session. *Held* also, *per* Stuart, C. J. (Spankie, J., doubting).—That the High Court is competent, in the exercise of its power of revision under s. 297 of Act X. of 1872 (corresponding with s. 439 of Act X. of 1882), to quash a commitment made by a Court of Session under the provisions of s. 472 of that

Act (or s. 477 of the new Act). *Held* also *per* Spankie, J.—That the Court of Session was competent, notwithstanding that L had only charged S with offences under ss. 193 and 218 of the Penal Code, to charge L with offences under ss. 195 and 211, if such offences had come under its cognizance.—*Empress v. Lachman Singh*, I. L. R., 2 All. 398. [Stuart, C.J., and Spankie, J. June 11, 1879.]

## COMPENSATION.

A MAGISTRATE having jurisdiction is authorized by law in making an order under s. 270, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 250 of the new Code of Criminal Procedure (Act X. of 1882), directing the complainant to make amends to the accused, notwithstanding that the complainant is to take his trial for perjury.—*Queen v. Roopun Rae*, 15 W. R. 9; 6 B. L. R. 296. [Jackson and Ainslie, JJ. Jan. 26, 1871.]

## CONTRADICTORY STATEMENTS—ALTERNATIVE CHARGE.

It being impossible to decide which of the prisoner's two statements was false, and which true, the prisoners were convicted on the alternative charge.—*Queen v. Narain Doss and others*, 1 W. R. 15. [Glover, J. Sep. 20, 1864.]

DISCUSSION as to the propriety of a conviction on a charge of false evidence, one of the statements charged having been made to the police under compulsion.—*Queen v. Nagdeva Ourut*, 3 W. R. 6. [Campbell, Jackson, and Glover, JJ. May 3, 1865.]

THE prisoner, who as a witness in a former case had made one statement before the Magistrate and a contrary one before the Sessions Judge, was tried and convicted of having either given false evidence before the Judge or given false evidence before the Magistrate. *Held* (Norman and Campbell, JJ., doubting) that the conviction was right. *Held* also (Campbell, J., differing) that the evidence taken before the Judge was admissible on the charge of having given false evidence before the Magistrate.—*Queen v. Musamat Zamiran*, B. L. R. Sup. Vol. 521; 6 W. R. 65. [Peacock, C.J., and Norman, Kemp, Seton-Karr, and Campbell, JJ. Aug. 31, 1866.] Followed by *Empress v. Ghulet*, I. L. R., 7 All. 44, *infra*, p. 157.

A CONVICTION on a charge of giving false evidence was set aside, the alleged conflicting statements having been made after a lapse of four years, and there being no proof of deliberate intention to give false evidence, which was held to be the gist of the offence.—*Queen v. Nagbunsee Lall*, 6 W. R. 89. [Kemp and Markby, JJ. Dec. 10, 1866.]

WHERE a person makes one statement before the Magistrate, and a directly different statement before the Civil Court, his commitment on an alternative charge, after the consent of the Civil Court has been obtained under s. 169 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), is strictly legal.—*Queen v. Oottur Namin Singh*, 8 W. R. 79. [Glover and Hobhouse, JJ. Nov. 4, 1867.]

IN a case of giving false evidence, the charge should show the particular matter in respect of which the accused is put upon his trial: and only so much of the prisoner's statements ought to be set out as is necessary in order to show the particular false statements relied on by the prosecution. The mere fact that a person has made a statement which contradicts a previous statement is not itself necessarily sufficient to bring him within s. 193, Penal Code. The circumstances under which, and the intention with which, the particular statement relied on by the prosecution is made, must, in each case, be considered before it can be held that the offence has been committed.—*Queen v. Soonder Mohoorree*, 9 W. R. 25. [Macpherson and Jackson, JJ. [Mar. 2, 1868.]

BEFORE an accused person can be convicted of giving false evidence, it must be proved that he made the statements which are the basis of the charge, and, further, that he made them with the necessary criminal intention. The mere fact that a man has made contradictory statements does not necessarily prove that he has committed an offence under s. 193. The Court must be satisfied as to the intention with which the statements were made.—*Queen v. Denonath Buzzar*, 9 W. R. 52. [Macpherson and Glover, JJ. Mar. 30, 1868.]

It does not follow that all contradictions on oath by opposing witnesses necessarily involve perjury.—*Queen v. Kalichurn Lahooree*, 9 W. R. 54. [Kemp and Phear, JJ. April 3, 1868.]

PROOF of contradictory statements on oath or solemn affirmation, without evidence as to which of them is false, is sufficient to justify a conviction, upon an alternative finding, of the offence of giving false evidence, under s. 72 of the Penal Code and ss. 242, 381, and 382 of the Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 367 of the new Code of Criminal Procedure (Act X. of 1882). The English law upon the subject stated.—*In re Palany Chetty*, 4 Mad. H. C. R. 51. [Scotland, C.J., and Collett, J. May 18, 1868.] Followed by *Empress v. Ghulel*, I. L. R., 7 All. 44, *infra*, p. 157.

WHERE a person makes two contradictory statements in the course of a judicial proceeding, he may be tried and convicted of giving false evidence on a single charge, if there is evidence to show which statement is false.—*Reg. v. Gúnoji bin Pándji*, 5 Bom. H. C. R. 49. [Couch, C.J., and Newton, J. June 25, 1868.]

AN alternative finding under s. 381 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 367 of the new Code of Criminal Procedure (Act X. of 1882), should not be resorted to until both the committing officer and the Sessions Judge are satisfied that no reliable evidence is procurable in support of one or other of the charges; and such a finding cannot be based in a case of giving false evidence upon two statements, which are not absolutely contradictory the one of the other, nor when in one of them the accused gives only hearsay evidence. Every presumption in favour of the possible reconciliation of the statements must be made.—*Queen v. Bedoo Noshyo and others*, 12 W. R. 11; 13 B. L. R. 325n. [Norman and Hobhouse, JJ. June 24, 1869.]

S. 242, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 367, new Code of Criminal Procedure (Act X. of 1882), points out how the charge is to be drawn up in a case in which it is doubtful which of two statements made by the accused is false.—*Queen v. Kala Khan*, 12 W. R. 23. [Jackson and Mitter, JJ. July 5, 1869.]

IN the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas before the Magistrate he had stated, as was the fact, that the prisoner had committed the murder. *Held* that such witness was guilty under s. 193, and not under s. 194 of the Penal Code, as he did not know that he would cause a conviction for murder.—*Queen v. Hardyul*, 3 B. L. R. A. Cr. 35. [Norman and Jackson, JJ. July 13, 1869.]

WHERE a person is charged with making two contradictory statements, it must be proved by direct evidence that both statements were made, and there must be an inquiry as to which statement is untrue, and whether the accused wilfully made the statement which is supposed to be false, knowing it to be false.—*Queen v. Moti Khowa*, 12 W. R. 31; 3 B. L. R. A. Cr. 36. [Norman and Jackson, JJ. July 13, 1869.] But see *Empress v. Ghulel*, I. L. R., 7 All. 44, *infra*, p. 157, and the cases therein cited.

IN a case of giving false evidence by making contradictory statements, one of which the accused knew to be false, it is not sufficient to support the falseness of either story by the other deposition, but there must be *independent* evidence of the falseness of either story.—*Queen v. Kola*, 12 W. R. 66; 4 B. L. R. A. Cr. 4. [Norman and Kemp, JJ. Oct. 8, 1869.] But see *Empress v. Ghulel*, I. L. R., 7 All. 44, *infra*, p. 157, and the cases therein cited.

IN a case of giving false evidence by making contradictory statements, a Court of Session cannot, without making further inquiry, commit a person for trial under s. 172 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 477 of the new Code of Criminal Procedure (Act X. of 1882), when both contradictory statements are not made before it. By the words "under its own cognizance" in that section it is meant to provide for a case where it is brought under the notice of the Court of Session in the course of a judicial proceeding that the crime with which the party is to be charged has been committed by him. The following important observations were made by Norman, J., in the case: "It is one thing to show that a particular statement made by a witness is inaccurate, or even false, and another to say that the witness has intentionally given false evidence . . . . To overlook the difference between the making of contradictory statements by a witness under examination, and the giving of intentional false evidence, is to shut one's eyes to the infirmities of human memory, to fail to understand how slow are the intellects and how imperfect the powers of expression of uneducated peasants . . . I firmly believe that if a witness could be convicted upon alternative charges of giving false evidence on contradictions of such a character as those supposed to exist in the present case, no native witness of the lower classes subjected to cross-examination by an adroit and perhaps not over-scrupulous advocate would be safe."—*Queen v. Nomal*, 12 W. R. 69; 4 B. L. R. A. Cr. 9. [Norman and Kemp, JJ. Nov. 26, 1869.]

To establish the offence of giving false evidence, direct proof of the falsity of the statement on which the perjury is assigned is essential. But, as legitimate evidence for the purpose, the law makes no distinction between the testimony of a witness directly falsifying such statement and the contradictory statement of the person charged, although not made on oath. Such a statement, when satisfactorily proved, is quite as good evidence in proof of the charge as the criminatory statement of a person charged with any other offence and on precisely the same ground—that it is an admission of the accused person inconsistent with his innocence. As to the weight to be given to contradictory statements, the sound rule is that a charge of perjury is not maintainable upon proof of one such statement not on oath, or more than one if proved by a single witness only, unless supported by confirmatory evidence tending to show the falsity of the statement in the charge. With respect to the kind or amount of confirmatory proof required, it must be considered in each case whether the particular evidence offered is sufficient to induce a belief in the truth of the contradictory statement or direct testimony.—Reg. v. Ross, 6 Mad. H. C. R. 342. [Scotland, C.J., and Innes, J. Aug. 4, 1871.]

WHERE a prisoner is charged separately for having given false evidence with regard to two statements directly opposed to each other, a plea of guilty on one of the charges does not involve an acquittal on the other. A Sessions Court is bound to take evidence and try a charge before it can acquit a prisoner of that charge.—Queen v. Hossain Ali, 8 B. L. R. Ap. 25. [Ainslie, J. Aug. 15, 1871.]

HELD by the majority (Jackson, J., dissenting) that a charge framed on the model given in sch. 3 of the Code of Criminal Procedure (Act X. of 1872) charging the accused upon two charges with having made contradictory statements in the course of judicial proceedings under s. 193, Penal Code, is a good charge, and that (Phear and Jackson, JJ., dissenting) the Court or jury, if convicting, need not, by direct evidence, find which of the two statements is false; all that is necessary being that the Court or jury should find that the allegations made in the charge are proved.—Queen v. Mahomed Hoomayoon Shah, 21 W. R. 72; 13 B. L. R. F. B. 324. [Couch, C.J., and Kemp, Jackson, Phear, Markby, Glover, Ainslie, Pontifex, Birch, and Morris, JJ. April 11, 1874.] Followed by Empress v. Ghulet, I. L. R., 7 All. 44, *infra*, p. 157.

To support a finding upon an alternative charge of perjury, there must be legal evidence of the truth of each branch of the charge. The deposition of the prisoner given in Hindustani, but taken in English by the Magistrate, and the memorandum at the foot of the deposition that it was read to the witness, and was by him acknowledged to be correct, though held not to be quite satisfactory (as the person who took down in English what the prisoner had said in Hindustani was not examined as a witness, and the prisoner had no opportunity of cross-examining him), was admitted as a proper deposition within the provisions of the Code of Criminal Procedure, and the memorandum was taken under s. 80 of the Evidence Act (I. of 1872) as evidence of the facts stated in it, and as affording some evidence that the translation was correct.—Queen v. Gonowry, 22 W. R. 2. [Phear and Morris, JJ. April 21, 1874.] Follows Queen v. Mahomed Hoomayoon Shah (21 W. R. 72; 13 B. L. R. 324), which again is followed by Empress v. Ghulet, I. L. R., 7 All. 44, *infra*, p. 157.

A PRISONER, who had made certain contradictory statements on oath before a Magistrate and a Court of Session respectively, was convicted by the same Court of Session on a charge, in the alternative, of giving false evidence, either before a Magistrate or before the Court of Session. Held that the Court was precluded by s. 473 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 457 of the new Code of Criminal Procedure (Act X. of 1882), from trying the charge.—Sundriah v. Reg., I. L. R., 3 Mad. 254. [Turner, C.J. Aug. 8, 1881.]

IN prosecutions for giving false evidence under s. 193 of the Penal Code, the case of each person accused should be separately inquired into, and, if committed for trial, separately tried. It is wholly erroneous to include them in one joint charge. It is not of itself sufficient to warrant a conviction for giving false evidence that an accused person has made one statement on oath at one time, and a directly contradictory one at another. The charge must not only allege which of such statements is false, but the prosecutor must be prepared with confirmatory evidence independent of the other contradictory statement to establish the falsity of that which is impeached as untrue.\* R. v. Jackson (1 Lewis C. C. 270), Reg. v. Wheatland (8 C. and P. 235), and Rex v. Harris (3 Binn. and Ald. 926), referred to. S. 455 of Act X. of 1872 (or s. 236 of Act X. of 1882) is no

\* Overruled by Empress v. Ghulet, I. L. R., 7 All. 44, *infra*, p. 157.

authorit' for framing, against a person accused of giving false evidence who has made one statement on oath on one occasion, and a directly contradictory one on oath on another occasion, a charge in the "alternative;" that word, as used in that section, meaning that, where the facts which can be proved make it doubtful what particular description of offence an accused person has committed, the charges may be so varied or alternated as to guard against his escaping conviction through technical difficulties. *Held*, therefore, where three persons were committed for trial jointly charged with "having, on or about the 26th September 1881, or the 18th October 1881, being legally bound upon oath to state the truth, knowingly on those days, regarding the same subject, made contradictory statements upon oath," and thereby committed an offence punishable under s. 193 of the Penal Code, and such persons were jointly tried on such charge, that such charge was bad for being single and joint against the three accused persons instead of several and specific in regard to each of them; that it was further bad because it did not distinctly and in terms allege which of the statements was false; that, assuming a committal upon so faulty a charge should be allowed to stand, the Court of Session should have prepared a fresh charge against each of the accused persons specifically setting forth the statement alleged to be false, and should then have proceeded to try each of them separately; and that, there being no evidence that either of the statements made by two of such persons was false, except that it was contradicted by the other, the charge against such persons was not sustainable, there being no sufficient evidence that either of the statements was false.—*Empress v. Niaz Ali*, I. L. R., 5 All. 17. [Stuart, C.J., and Straight, J. July 24, 1882.]

S. 161 of the Code of Criminal Procedure (Act X. of 1882) makes it obligatory on a person examined in the course of a police-investigation under ch. 14 to answer truly all questions put to him (other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture), and such person, if he knowingly answers falsely, commits the offence of giving false evidence in a stage of judicial proceeding under s. 193 of the Penal Code. The accused was convicted by the Sessions Court on an alternative charge of having given false evidence in a judicial proceeding under s. 193 of the Penal Code, one statement being made before a head-constable of police, and the other before the Magistrate (P. C.). There was no evidence to prove which of the two statements was false. The prisoner appealed to the High Court, which delivered the following judgment: "S 161, Criminal Procedure Code, 1882, says that any person, being under examination in the course of a police-investigation under Ch. XIV. (s. 155) of the Code, shall be bound to answer truly all questions put to him (with certain exceptions not applicable to the present case. This provision is new. Under the previous law, the obligation "to answer truly" in a police-investigation was not enforced by any express provision. S. 191 of the Penal Code says that, if a person who is bound by any express provision to state the truth, states knowingly what is false, he is said to give false evidence. The appellant in this case has, therefore, as the law now stands, given false evidence. S. 193 of the Penal Code says that whoever intentionally gives false evidence in any stage of a judicial proceeding shall be punished, &c. And under explan. 2 of the same section a police-investigation under Ch. XIV. of the Criminal Procedure Code is a stage of a judicial proceeding. We therefore think that the District Judge's decision is right under the present law, and reject the petition of appeal."—*Queen-Empress v. Prasharam Ráysing*, I. L. R., 8 Bom. 216. [Pinhey and Scott, JJ. Nov. 29, 1883.]

IN order to sustain any conviction for giving false evidence upon an alternative charge when no evidence is offered to prove the falsity of either statement in particular, it must be clear that the two statements are contradictory. The law laid down by the Full Bench in the case of the *Empress v. Kassim Khan* (I. L. R., 7 Cal. 121) has been altered by the provisions of s. 161 of the Code of Criminal Procedure (Act X. of 1882), and a witness who makes a false statement to a police-officer in reply to a question which he is bound to answer would be guilty of intentionally giving false evidence. When four persons were accused of having given false evidence in the same proceeding, and the Sessions Judge, while professing to try each accused separately, heard the evidence of the witnesses only once, *held* that this was substantially trying the four prisoners together, and was an improper mode of procedure.—*Nathu Sheikh v. Empress*, I. L. R., 10 Cal. 405. [McDonnell and Field, JJ. Feb. 7, 1884.]

A PRISONER was convicted on an alternative charge in the form provided by sch. 5, xxviii., ii. (4), of the Criminal Procedure Code, of having given false evidence, such evidence consisting of contradictory statements contained in one deposition while he was under cross-examination and re-examination as a witness in a judicial proceeding. There was no finding as to which of the contradictory statements was false. *Held* (Norris, J., dissenting) that s. 233 of the Criminal Procedure Code did not affect the matter, and that the

and as the writer of the document, it was held that T ought to be convicted on a charge of abetting the giving of false evidence.—*Queen v. Chundi Churn Nauth and another*, 8 W. R. 5. [Jackson and Hobhouse, JJ. June 4, 1867.]

It is not necessary to constitute the offence of abetment that the act abetted should be committed.—Reference in the Case of Dinonath Burooa and others, 18 W. R. 32. [Kemp and Glover, JJ. July 24, 1872.]

THERE can be no offence of the abetment of giving false evidence unless the person charged with abetment intended not only that the statement should be made, but intended that the statement should be made falsely.—*Queen v. Nim Chand Mookerjee and another*, 20 W. R. 41. [Markby and Birch, JJ. June 27, 1873.]

THE Magistrate convicted accused of abetting the giving of false evidence in a judicial case proceeding before himself. Held that, as by the proceedings of 24th March 1873 the Magistrate could not have tried the person who gave false evidence, he could not try the abettor.—*Pro.*, Nov. 6, 1873, 7 Mad. H. C. R. Ap. 28. According to s. 487 of the new Code of Criminal Procedure (Act X. of 1882), no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, can try any person for the offence of giving false evidence when such offence is committed before himself.

#### FALSE EVIDENCE, WHAT IS A GIVING OF.

A WITNESS falsely deposing in another's name should be charged with giving false evidence under s. 193, and not with cheating by personation under ss. 415 and 419 of the Penal Code.—*Reg. v. Premá Bhika*, 1 Bom. H. C. R. 89. [Forbes, Westropp, and Tucker, JJ. Nov. 5, 1863.]

THE making of a false statement without knowledge as to whether the subject-matter of the statement is false or not, is legally a giving of false evidence.—*Queen v. Echan Meeah and others*, 2 W. R. 47. [Glover, J. Mar. 20, 1865.]

A SUB-REGISTRAR is competent, for any purpose contemplated by Act XX. of 1866, to examine any person; and any statement made by such person before an officer in any proceedings or inquiries under the Act, if intentionally false, renders such person liable to a criminal prosecution.—*Queen v. Juggut Chunder Dutz*, 6 W. R. 81. [Kemp and Markby, JJ. Oct. 5, 1866.]

THE making of a false return of service of summons is an offence punishable, not under s. 181, but under s. 193, of the Penal Code.—*Queen v. Shama Churn Roy*, 8 W. R. 27. [Jackson and Hobhouse, JJ. June, 25, 1867.]

IN trying a prisoner charged with giving false evidence, a Sessions Judge rejected facts which were proved by the evidence of certain witnesses, because a medical officer gave it as his opinion that what the witnesses deposed to could not be true. Held that it was not the proper way to try a case to rely on mere theories of medical men or skilled witnesses of any sort against facts positively proved. Norman, J., in delivering the judgment of the Court, observed: "It appears to us that the true rule is that no man can be convicted of giving false evidence except upon proof of facts which, if accepted as true, show not merely that it is incredible, but that it is impossible that the statement of the party accused made upon oath can be true. If the inference from the facts proved falls short of this, it seems to us that there is nothing on which a conviction can stand; because, assuming all that is proved to be true, it is still possible that no crime was committed"—*Queen v. Ahmed Ally and others*, 11 W. R. 25. [Norman and Jackson, JJ. April 5, 1869.]

A CONVICTION may be had for giving false evidence under s. 193, Penal Code, even if the evidence given in matters not judicial (such as before the Collector acting in his fiscal capacity under Reg. XIX. of 1814), but it must be proved that the false statement was made under the sanction of the law.—*Audheen Roy and others*, Petitioners, 14 W. R. 24. [Bayley and Kemp, JJ. July 30, 1870.]

WHEN an offence under s. 193 of the Penal Code is established, a conviction under s. 181 is illegal. When the accused made, on solemn affirmation, a statement before an Income-tax Commissioner, which statement the accused knew, or had reason to believe, to be incorrect, it was held that such statement amounted to the offence of giving false evidence in a judicial proceeding, under s. 193 of the Penal Code, and was, therefore, not cognizable by a Full-power Magistrate, as it could not be treated as constituting an offence



triable under s. 181 of the Penal Code (making a false statement to a public servant).—*Reg. v. Dayalji Endarji*, 8 Bom. H. C. R. 21. [Lloyd and Kembal, JJ. April 25, 1871.]

THE examination of a complainant in reference to the matter of his petition of complaint is an investigation directed by law, and therefore a stage of a judicial proceeding. Consequently, if in the course of that examination false evidence is intentionally given by the complainant, he is legally chargeable with the offence described in s. 193 of the Penal Code. If the charge of voluntarily causing hurt, contained in a petition of complaint, is wilfully false, and made with intent to injure, then the complainant is legally chargeable with the offence described in s. 211 of the Penal Code.—*Queen v. Mata Dyal*, 4 N. W. P. 6. [Pearson, J. Jan. 13, 1872.]

A STATEMENT, untrue to the prisoner's knowledge, made upon oath in the course of a judicial proceeding, amounts to perjury, notwithstanding the fact that the statement itself is immaterial to the matter before the Court.—*Queen v. Shib Prosad Giri*, 19 W. R. 69. [Phear and Glover, JJ. April 29, 1873.]

A PETITION not bearing the signature of the accused, and, therefore, not a declaration made or subscribed by him, cannot be made the foundation of a charge or conviction under s. 199 of the Penal Code; but a deposition on oath supporting such a petition, if false, justifies a charge under s. 193 of the Code.—In the Matter of Ram Reevay Koowar, 7 C. L. R. 536. [Garth, C.J., and Maclean, J. Oct. 22, 1880.]

PERSONS giving false answers to questions put by a police-officer conducting an inquiry preliminary to a proceeding before a Court of justice may be convicted of giving false evidence under ss. 191 and 193 of the Penal Code.—In the Matter of Juggernath Sahai and another, 8 C. L. R. 236. [Cunningham and Prinsep, JJ. Feb. 15, 1881.]

A CHARGE of giving false evidence under s. 193 of the Penal Code cannot be sustained in respect of a statement made to a police-officer engaged in making an investigation under the provisions of the Criminal Procedure Code. Ss. 118 and 119 of the latter Code impose no legal obligation on the persons examined thereunder to speak the truth.—*Empress v. Kassim Khan*; *Empress v. Musst. Dabi* and another, 8 C. L. R. 300 (F. B.). But see the new provision in the corresponding section of the Criminal Procedure Code of 1882 (s. 161), which makes it compulsory on persons to answer truly all questions. See *Queen-Empress v. Parshram Ráysing*, 1. L. R., 8 Bom. 216, under the heading—"Contradictory Statements—Alternative Charge, p. 156."

A PERSON filing a written statement in a suit is bound by law to state the truth, and if he makes a statement which is false to his knowledge or belief, or which he believes not to be true, he is guilty of giving false evidence within the meaning of s. 191 of the Penal Code.—*Queen-Empress v. Mehrban Singh*, 1. L. R., 6 All. 626. [Straight, Offg. C.J. July 14, 1884.]

#### FALSE STATEMENT BEFORE OFFICER NOT HAVING JURISDICTION.

WHERE a plaintiff before a Munsif came and petitioned the Judge complaining that the Munsif had improperly refused to examine his witnesses, and had dismissed his suit, although informed that witnesses were in attendance, and the Judge, upon examining the petitioner upon solemn affirmation, and finding the charge unproved, ordered proceedings to be taken against the petitioner for giving false evidence, *held* that the Judge had no authority to examine the petitioner upon oath in such a case, and that the oath having been made, and the evidence given *coram non judice*, could not form the subject of a prosecution for false evidence.—*Queen v. Chota Jadub Chunder Biswas*, W. R. Sp. 15. [Seton-Karr and Jackson, JJ. Mar. 2, 1864.]

WHERE a Subordinate Magistrate conducted an inquiry in a case of murder and riot, without having received the necessary authority under s. 192, Act X. of 1882, it was held that an untrue statement made by a witness in the course of such inquiry was not "false evidence" within s. 193, as the Subordinate Magistrate was acting without jurisdiction.—*Khushi Khan v. Crown*, Panj. Rec., No. 24 of 1870.

HELD by the Division Bench that where the Assistant Commissioner had no jurisdiction to entertain a suit against one R K, he had therefore no authority under Act X. of 1873 to administer an oath or affirmation to him in the course of the trial: that therefore R K was never legally bound to state the truth, and was therefore not liable to be convicted of giving false evidence in respect of any statement made by him in the trial of the said case upon the merits.—*Narainjan Das v. Ram Kishen*, Panj. Rec., No. 32 of 1879.

## FALSE STATEMENT TENDING TO CRIMINATE.

WHEN a party makes a false statement being legally bound by solemn affirmation, the fact that the statement was one tending to criminate himself will not justify his acquittal on a charge of giving false evidence.—*Pro.*, Feb. 21, 1867, 3 *Mad. H. C. Rep.* Ap. 30.

ALTHOUGH a person under examination as a witness is bound by his affirmation to tell the truth, if he is examined on a point on which he is likely to criminate himself, his position should be explained to him by the Magistrate, as otherwise he may be induced, through ignorance of the state of the law, to deny the existence of the facts for fear of penal consequences. Although, without such a warning, he may make a false denial, and thereby become guilty of the offence of intentionally giving false evidence, his offence will not be deserving of severe punishment.—*Jadoonath Dutt, Appellant*, 2 C. L. R. 181. [*Markby and Prinsep, JJ.* April 18, 1878.]

## INTENTION.

CORRUPT intention in giving false evidence may be inferred from circumstances.—*Queen v. Rhutten Ram*, 2 W. R. 63. [*Glover, J.* April 20, 1865.]

A CONVICTION on a charge of giving false evidence was set aside, the alleged conflicting statements having been made after a lapse of four years, and there being no proof of deliberate intention to give false evidence, which was held to be the gist of the offence.—*Queen v. Nagbunsee Lall*, 6 W. R. 89. [*Kemp and Markby, JJ.* Dec. 10, 1866.]

THE intention is an essential ingredient in the offence contemplated by s. 218 of the Penal Code. The making of a false return of service of summons is an offence punishable, not under s. 181, but under s. 193, of the Penal Code, and is cognizable by the Court of Session alone.—*Queen v. Shama Churn Roy*, 8 W. R. 27. [*Jackson and Hobhouse, JJ.* June 25, 1867.]

THE mere fact that a person has made a statement which contradicts a previous statement is not itself necessarily sufficient to bring him within s. 193, Penal Code. The circumstances under which, and the intention with which, the particular statement relied on by the prosecution is made, must, in each case, be considered before it can be held that the offence has been committed.—*Queen v. Soonder Mohoree*, 9 W. R. 25. [*Macpherson and Jackson, JJ.* Mar. 2, 1868.]

IN a case of giving false evidence by making contradictory statements, the Court must be satisfied as to the intention with which the statements were made.—*Queen v. Denonath Buzzar*, 9 W. R. 52. [*Macpherson and Glover, JJ.* Mar. 30, 1868.]

UPON a prosecution for giving false evidence, the law does not require proof of a corrupt intention. It is sufficient that there is proof of intention, and if the statement was false, and known by the accused to be false, it may be presumed that, making it, the accused intentionally gave false evidence.—*Queen v. Amere Ali Khan*, 3 N. W. P. 133. [*Turner, J.* June 16, 1871.]

THE rule of Civil Procedure contained in the last clause of s. 258 of the Civil Procedure Code (Act XIV. of 1882)—that uncertified adjustments of a decree are not to be recognized by "any Court"—does not affect the substantive criminal law. The words "any Court" in that clause have no application to a Criminal Court investigating a charge of fraudulently executing a decree under s. 210 of the Penal Code. Those words do not bar any criminal remedy which an injured judgment-debtor may have against a fraudulent decree-holder, whether by a prosecution under ss. 193, 210, 406, or any other section of the Penal Code. In s. 210 of the Penal Code the word "satisfied" is to be understood in its ordinary meaning, and not as referring to decrees, the satisfaction of which has been certified to the Court. Under s. 235 of the Code of Civil Procedure (Act XIV. of 1882) the decree-holder, or the party who applies for execution, is bound to state in his application any adjustment between the parties after decree, whether such adjustment has or has not been previously certified to the Court. *Paupayya v. Narasannah* (I. L. R., 2 *Mad.* 216) followed. Intentional omission to make such statement amounts to an offence under s. 193 of the Penal Code. S. 199 of the Penal Code does not apply to applications for execution containing false averments.—*Queen-Empress v. Bapuji Dayaram*, I. L. R., 10 *Bom.* 288. [*Birdwood and Jardine, JJ.* Feb. 18, 1886.]

## JUDICIAL PROCEEDING, WHAT IS NOT A STAGE OF.

AN inquiry by an Assistant Magistrate, with a view to tracing the writer of an anonymous letter addressed to him, charging certain persons with murder, and without reference to the truth or otherwise of the charge of murder, is not a stage of a judicial proceeding in which the giving of false evidence is punishable under s. 193 of the Penal Code.—*Queen v. Bykunt Nath Banerjee*, 5 W. R. 72. [Jackson and Glover, JJ. April 23, 1866.]

THE prisoner was convicted of perjury by wilfully making a false statement in a verified petition presented under s. 19 of the Income-tax Act (IX. of 1869) to a Tahsildar. *Held* that the Tahsildar was not an officer competent to receive such a petition, and that no offence was committed.—*Moniappa Oodian*, 5 Mad. H. C. R. 326. [Scotland, C.J., and Collett, J. Mar. 11, 1870.]

THE prisoner, a vakil, presented a vakalatnama in the District Munsif's Court signed by the defendant in a civil suit, authorizing the prisoner to appear for the defendant. The vakalatnama falsely purported to have been executed before the adighari of the village, and to bear the signature of the adighari. The prisoner was convicted under s. 193 of the Penal Code. *Held* that the case was not brought within the section, and that the prisoner was entitled to his discharge from custody.—*In re Keilasum Putter*, 5 Mad. H. C. R. 373. [Scotland, C.J., and Innes, J. July 11, 1870.]

THE accused was convicted of intentionally giving false evidence in a judicial proceeding, in having, as a witness, therein made, on solemn affirmation, a false statement. The proceedings in the trial at which the alleged false evidence was given were subsequently annulled, in consequence of the sanction for the prosecution being insufficient. *Held* that the conviction of the accused must be reversed, as the false statement was not made in a stage of judicial proceeding. The proceedings in a criminal trial, when necessary to be proved; should be proved by their production.—*Reg. v. Ravi valad Taju*, 8 Bom. H. C. R. 37. [Gibbs and West, JJ. June 15, 1871.]

A MAN died leaving some money due to him in the hands of the telegraph authorities. P wrote a letter to those authorities claiming the money as the sole heir of the deceased. P's letter was sent to the District Judge for verification and orders. P supported his claim before the Judge by the evidence on oath of C. C's evidence being, in the opinion of the District Judge, false, the District Judge, in his capacity as Sessions Judge, tried him for giving false evidence, and convicted him of that offence. *Held* that, as the reference to the District Judge by the telegraph authorities of P's letter for verification, and the subsequent action in regard thereto, did not constitute a "judicial proceeding," and as the District Judge had not any authority to administer an oath to C, the conviction was illegal. *Held* also that the District Judge had no jurisdiction, under s. 477 of the Criminal Procedure Code, to try C.—*Empress v. Chait Ram*, 1 L. R., 6 All. 103. [Straight, J. Oct. 27, 1883.]

## LOCUS PENITENTIE.

HELD by the majority of the Court (Jackson, J., *dissentiente*) that there ought to be a *locus penitentiae* for witnesses who have deposed falsely to retract their false statements.—*Queen v. Gullie Mullick and another*, W. R. Sp. 10. [Steer, Seton-Karr, and Jackson, JJ. Feb. 18, 1864.]

## MAGISTRATE BEFORE WHOM FALSE STATEMENT MADE NOT TO TRY CASE.

WHERE a false statement is made in a stage of a judicial proceeding before a Magistrate, he ought not to convict under s. 181 of the Penal Code, but should commit to the Sessions under s. 193 of that Code.—*Queen v. Nussurooddeen Shazwal*, 11 W. R. 24. [Norman and Jackson, JJ. Mar. 25, 1869.]

THE Magistrate, before whom the offence of intentionally giving false evidence in a judicial proceeding is committed, may himself try and commit the persons so offending.—*Queen v. Ramlochan Singh and another*, 18 W. R. 15. [Kemp and Glover, JJ. June 11, 1872.]

WITH the exception of cases triable by the Court of Session exclusively, a Court cannot try any offence described in ss. 467, 468, and 469 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1892), when committed before itself.—*Pro.*, Mar. 24, 1873, 7 Mad. H. C. R. Ap. 17.

THE offence of intentionally giving false evidence in a judicial proceeding cannot be tried by the Magistrate before whom the false evidence is given. This offence, being an attempt to pervert the proceedings of a Court to an improper end, is a contempt of its authority (ss. 435, 436, 471, 472, and 473 of the Code of Criminal Procedure).—*Reg. v. Navranbeg Dulabeg*, 10 Bom. H. C. R. 73. [Bayley and West, JJ. May 21, 1873.]

**HELD** (Stuart, C.J., dissenting) that an offence under s. 193 of the Penal Code, being an offence in contempt of Court within the meaning of s. 473 of Act X. of 1872 (corresponding with s. 487 of Act X. of 1882), cannot, under that section, be tried by the Magistrate before whom such offence is committed. *Queen v. Kultaran Singh* (I. L. R., 1 All. 129) and *Queen v. Jagat Mal* (I. L. R., 1 All. 162) overruled. *Per* Stuart, C.J.—A Magistrate before whom such an offence is committed, if competent to try it himself, is not precluded from so doing by the provisions of s. 471 of Act X. of 1872 (corresponding with s. 476 of Act X. of 1882).—*Empress v. Kashmiri*, I. L. R., 1 All. 625. [Stuart, C.J., and Pearson, Turner, Spankie, and Oldfield, JJ. Aug. 22, 1877.]

UNDER s. 487 of the Code of Criminal Procedure (Act X. of 1882), Judges of High Courts, the Recorder of Rangoon, and Presidency Magistrates, are empowered to try cases under s. 193 of the Penal Code, even though the false evidence has been given before themselves, and they have sanctioned the prosecution; but this power has not been extended to Mofussil Magistrates.

#### MATERIALITY.

THE materiality of the subject-matter of the statement is not a substantial part of the offence of giving false evidence in a judicial proceeding; and an indictment under ss. 191, 193 of the Penal Code, though it does not allege materiality, is good if it alleges sufficiently the substance of the offence.—*Reg. v. Aidrus Sahib*, 1 Mad. H. C. R. 38. [Scotland, C.J., and Bittleston, J. Oct. 30, 1862.]

IN a case of false evidence, it is not necessary for the Judge in his charge to show how the false statements, even if made intentionally, are material in the case.—*Queen v. Parbutty Churn Sircar*, 6 W. R. 84. [Loch J. Nov. 20, 1866.]

TO constitute the offence of giving false evidence under s. 191 of the Penal Code, it is not necessary that the false evidence given should be material to the case in which it is given. *Aliter* under s. 192. Where the Senior Assistant Sessions Judge, without taking evidence, acquitted the accused after calling upon him to plead, the prosecutor being unable to say that the alleged false statements of the accused were material to the trial on which they were made, the High Court reversed the order of acquittal, and directed the trial to be proceeded with.—*Reg. v. Damodhor Ramchandra Kulkarni*, 5 Bom. H. C. R. 68. [Newton and Tucker, JJ. Aug. 13, 1868.]

#### OATH OR AFFIRMATION.

WHERE a witness was, at the beginning of the day, solemnly affirmed, once for all, to speak the truth in all the cases coming before the Court that day, *held* that he might be convicted, under s. 193 of the Penal Code, of giving false evidence in a suit which came on that day, although he was not affirmed to speak the truth in that suit after it was called on for hearing, and the names of the cases in the day's list were not mentioned when the affirmation was administered.—*Reg. v. Venkatachalam Pillai*, 2 Mad. H. C. R. 43. [Scotland, C.J., and Bittleston, J. Mar. 15, 1864.]

A CHARGE of perjury held unproved without proof that the statement on which it was founded was given on solemn affirmation under Act V. of 1840 instead of on oath.—*Queen v. Munwar Khan*, Appellant, 4 W. R. 24. [Loch and Glover, JJ. Nov. 11, 1864.]

A HINDU, who has become a convert to Christianity, is not under a legal obligation to speak the truth, unless his evidence be given under the sanction of an oath on the Holy Gospels, so as to justify a conviction under s. 193 of the Penal Code. A statement made by a witness in a criminal trial not upon oath or solemn affirmation is not a declaration within the meaning of s. 199 of the Penal Code, nor is the witness bound to make a declaration under s. 191.—*In re A Vedamuttu*, 4 Mad. H. C. R. 185. [Scotland, C.J., and Ellis, J. Dec. 21, 1868.]

No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the form in which any one of them is administered, shall invalidate any proceeding, or render inadmissible any evidence whatever in or in respect of which such omission, substitution, or irregularity took place, or

shall affect the obligation of a witness to state the truth.—Oaths Act (X. of 1873), s. 13. And a Full Bench of the Calcutta High Court has ruled (Jackson, J., dissenting) that the evidence of a witness, who was examined on simple affirmation under the direction of the Judge, is admissible as evidence, and that the word "omission" in s. 13 of the Oaths Act (X. of 1873) includes any omission, and is not limited to accidental or negligent omissions.—*Queen v. Sewa Bhogta*, 23 W. R. 12; 14 B. L. R. 294. [Couch, C.J., and Kemp, Jackson, Phear, and Markby, JJ. Dec. 22, 1874.]

## PUNISHMENT.

THE denial of one's relationship to his brother, whose witness he was, was held to be a kind of false evidence meriting only a mild punishment.—*Queen v. Govind Sahoo*, W. R. Sp. 14. [Steer and Seton-Karr, JJ. Feb. 29, 1864.]

A SENTENCE of five years' imprisonment was not excessive in the case of a man convicted of making a false statement in a judicial proceeding with the intention of defeating the ends of justice by procuring the acquittal of a guilty person.—*Queen v. Anoo and another*, W. R. Sp. 16. [Loch, Seton-Karr, and Jackson, JJ. Mar. 14, 1864.]

WHAT was held to be a sufficient punishment in a case of false evidence in which the prisoners pleaded guilty before the Sessions Court.—*Queen v. Unnoo Patoonnee and another*, 3 W. R. 15. [Jackson and Glover, JJ. May 18, 1865.]

A FALSE statement by a witness, as to his position or character, ought not to be punished so severely as a false charge or a false claim.—*Queen v. Rowah Goallah*, 5 W. R. 95. [Norman and Campbell, JJ. May 28, 1866.]

A DELIBERATE mis-statement made in a Court of justice, whether it tends to endanger the life and property of others, or to defeat and impede the progress of justice, is not an offence which should be lightly passed over. But for a simple mis-statement from which no such inferences can be drawn, a comparatively light sentence will suffice, particularly where the prisoner pleads guilty, and throws himself on the mercy of the Court.—*Queen v. Gurjoon Aheer*, 7 W. R. 37. [Loch and Seton-Karr, JJ. Mar. 6, 1867.]

FALSE charge under s. 211, and false evidence under s. 193, are not cognate offences, nor parts of the same offence, but may be punished separately.—*Queen v. Abdool Azeez*, 7 W. R. 59. [Kemp and Glover, JJ. April 27, 1867.]

CASE of perjury by females in which the majority of the Court refused to reduce the punishment.—*Queen v. Bishoo Bewa and another*, 7 W. R. 66. [Kemp, Seton-Karr, and Glover, JJ. May 7, 1867.]

A SENTENCE of 24 hours' imprisonment for giving false evidence was held to be quite inadequate.—*Queen v. Hossain Ali*, 8 B. L. R. Ap. 25. [Ainslie, J. Aug. 15, 1871.]

UNDER s. 193 of the Penal Code, it is obligatory upon the Court, in every case of conviction under that section, to pass some sentence of imprisonment.—*Empress v. Khodai Singh*, 3 C. L. R. 527. [Jackson, Markby, and Prinsep, JJ. July 29, 1878.]

WHERE the accused, who was a head-constable, was found guilty of making a false charge under s. 211, and of giving false evidence under s. 193 of the Penal Code, and the Sessions Judge passed sentences of three months' simple imprisonment for each offence, and, taking into consideration the accused's past conduct, directed that the sentences should run concurrently, *held* that the sentences were inadequate and illegal. Accordingly, the sentences were enhanced to three months' rigorous imprisonment for each offence; and as the two offences were distinct, the High Court directed, under s. 35 of the Criminal Procedure Code (Act X. of 1882), one sentence to commence after the expiration of the other. *Queen v. Abdool Azeez* (7 W. R. 59) followed.—*Queen-Empress v. Pir Mahomed*, 1 L. R., 10 Bom. 254. [Birdwood and Jurdine, JJ. Dec. 10, 1885.]

## SANCTION TO PROSECUTE FOR GIVING FALSE EVIDENCE.

THE discretion vested in a Civil Court of sanctioning a criminal charge of perjury is one that should be most carefully exercised. Remarks on the present case, in which the discretion was improperly exercised.—*Queen v. Poosa Ram and others*, 6 W. R. 11. [Jackson and Markby, JJ. June 25, 1866.]

A GENERAL sanction by a Judge to a prosecution for giving false evidence under s. 193 of the Penal Code, and for false verification, is not sufficient. The exact words upon which the prosecution is based, and the exact offences which the Magistrate is to investigate, should be pointed out. The verification of an application filed in the Civil Court, in

which it was stated that the applicant did not sign an alleged deed of compromise, does not subject him to punishment for giving false evidence. Such an application fails, not under s. 120, Act VIII. of 1859, but under s. 209 of that Act, and need not, therefore, be verified. Documents which were tendered in the civil suit, if relied on in a prosecution for giving false evidence, must be proved in the Criminal Court before they can be received as evidence.—*Queen v. Kartick Chunder Holdar and others*, 9 W. R. 58. [Kemp and Jackson, JJ. April 14, 1868.]

WHERE the sanction to a prosecution accorded under s. 169, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 195, new Code of Criminal Procedure (Act X. of 1882), extended only to one of the persons charged, the High Court quashed the commitment, and directed the discharge of the persons to whom the sanction did not apply.—*Queen v. Woodurnul Singh and others*, 10 W. R. 24A. [Phear and Hobhouse, JJ. Aug. 4, 1868.]

THE Civil Court, in giving permission to prosecute, should, in a case of forgery, state distinctly what the document is for which a prosecution is to be entertained. The particular act or acts of forgery, and, in a case of perjury, the particular words which constitute the perjury, should be specified.—*Gobind Chunder Ghose and others*, Reference in the Case of, 10 W. R. 41; 7 B. L. R. 28n. [Jackson and Hobhouse, JJ. Sep. 11, 1868.]

THE sanction accorded by a Civil Court in a case under s. 193, Penal Code, need not be more specific than a general sanction to prosecute for any false statement contained in the two depositions given.—*Queen v. Kadir Bux alias Kadir Mahomed*, 11 W. R. 17. [Jackson and Markby, JJ. Mar. 4, 1869.] But see s. 195, Code of Criminal Procedure (Act X. of 1882), *infra*, p. 171.

WHERE the Magistrate, before whom a witness gives false evidence, himself commits such witness for trial, his sanction of the prosecution will be implied.—*Reg. v. Muhammad Khán valad Imám Khán*, 6 Bom. H. C. R. 54. [Warden and Lloyd, JJ. Aug. 26, 1869.]

S. 167 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), requires that sanction to prosecutions therein mentioned shall be given before any such prosecution is commenced. Until the sanction is obtained, the tribunal by which the offence is triable has no jurisdiction, and a conviction founded on evidence taken without such sanction would be bad. Where a complaint charged a person who was one of the public servants mentioned in s. 167 of the Criminal Procedure Code with committing acts which, if committed by a private individual, would have constituted the offence of extortion, it was held that it was not illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution.—*Reg. v. Parshram Keshav*, 7 Bom. H. C. R. 61. [Gibbs and Melvill, JJ. July 28, 1870.]

AN application under s. 169 of the Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), praying for sanction to institute a prosecution on a charge of perjury, should, as a general rule, be first made to the Court before which the perjury is alleged to have been committed.—*In re Rájah of Venkatageri*, 6 Mad. H. C. R. 92. [Scotland, C.J., and Holloway, J. Feb. 27, 1871.]

WHERE sanction under s. 170 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), to prosecute a person criminally for fabricating false evidence, was not given, it was held that the error was not cured by s. 426 of that Code (or s. 537 of the new Code), and the person charged was ordered to be discharged. The sanction given by the Sessions Judge, after the case was committed to him, and the prisoner had pleaded to the charge, is not a sanction contemplated by the law.—*Queen v. Mohima Chunder Chuckerbutty*, 15 W. R. 45; 7 B. L. R. 26. [Loch and Macpherson, JJ. Mar. 25, 1871.]

ALTHOUGH the averment on the record of a Magistrate by whom a prisoner is tried, that the accused, before making a confession, was warned that it was optional with him to answer the questions put to him or not, is on appeal conclusive as to the fact of such a warning having been given; it is not conclusive to show that such a confession has not been made under the influence of fear engendered by previous maltreatment, or is not otherwise valueless. Allegations, made in a regular and proper manner before a Sessions Court on appeal, that a confession made by the accused before the Magistrate who tried the case was made under such circumstances as to preclude its admissibility in, or diminish

its value as evidence, should receive due attention, and be inquired into. A Sessions Court refusing to make such inquiry commits a grave error in law and procedure. Upon an inquiry which the High Court directed the Sessions Judge to make into such an allegation, the prisoners were ordered to be, and were, solemnly affirmed, and the prosecution neither objected to the form of the order nor to the affirmation of the prisoners, and moreover cross-examined them, but objected to their evidence being used upon the return of the inquiry. It was held that the objection, though possibly good if taken in time, was too late, and that the evidence of the prisoners might be used, whether the order directing them to be affirmed was correct or otherwise. Where, during such an inquiry, the Sessions Judge accorded his sanction to the prosecution for perjury of some of the witnesses who deposed on behalf of the prisoners, the High Court considered such a proceeding improper, and eminently calculated to defeat the object of the inquiry. *Semble*, a person cannot be convicted, under s. 201 of the Penal Code, of causing evidence of the commission of an offence by himself to disappear, nor can he be convicted of the abetment of such an act (*per* Lloyd and Kembell, J.J.). Question as to the extent of the privilege of speech accorded to counsel and advocates considered. Important statements made in verified petitions to the High Court, if untrue, should be contradicted on affidavit. Appointment of the Magistrate, who in the first instance had tried and convicted the accused, to be Crown Prosecutor to conduct an inquiry subsequently directed in the same case, censured as being unprecedented and objectionable. A public prosecutor should be without a personal interest in the cases which he conducts. Prisoner should be allowed to have free converse with their vakils out of the hearing of the police-officers in charge of such prisoners. It is undesirable that Magistrates whose decisions are under appeal, or who have been engaged in promoting the prosecution, or police-officers concerned in a case, should sit on the bench beside, or converse privately in Court with, the Judge who is engaged in trying the prisoners' appeal. If the Appellate Judge wishes to ascertain any facts relating to the case from the Magistrate who convicted the accused, he should examine the Magistrate upon oath or solemn affirmation, in the same manner as an ordinary witness.—*Reg. v. Káchináth Dinkar and others*, 8 Bom. H. C. R. 126. [Westropp, C.J., and Lloyd, Melvill, Green, and Kembell, J.J. April 12, 1871.]

SANCTION for the prosecution of the accused was accorded by an Assistant Sessions Judge in the following terms: "There is no doubt whatever that Táí, Báji, Báik, these three persons, made before me certain statements contradictory of the statements which they had made before the committing Magistrate. Therefore, if from such statements of theirs they may be liable to any charge, there is sanction from here" (*i.e.*, I give my sanction) "for their prosecution." *Held* that this gave sufficient sanction for the prosecution of the accused under s. 193 of the Penal Code, and that it is not necessary that the authority giving the sanction should specify the particular section of the Penal Code under which the accused is permitted to be prosecuted.—*Reg. v. Táí, wife of Náchand*, 8 Bom. H. C. R. 24. [Westropp, C.J., and Gibbs, Melvill, and Kembell, J.J. April 26, 1871.]

WHERE a Civil Court, by letter to a Subordinate Magistrate with committing powers, gave sanction for the prosecution of the accused under ss. 463 and 471 of the Penal Code (making and using a false document), and where the Magistrate, in committing the accused for trial, in addition to framing a charge under these sections, added a head of charge under s. 193 (giving false evidence), it was held that the Magistrate had no jurisdiction to commit the accused for trial on the last-mentioned head of charge.—*Reg. v. Subi Sáni*, 8 Bom. H. C. R. 28. [Westropp, C.J., and Lloyd, J. April 27, 1871.]

A CIVIL Court has no power to make an order sanctioning a prosecution for an offence committed before the Court of the Principal Sadr Amin on the small-cause side, that Court not being subordinate to the Civil Court.—*Ex-parte* Muhalingaiyan, 6 Mad. H. C. R. 191. [Scotland, C.J., and Kindersley, J. May 3, 1871.]

THE words of s. 191 of the Penal Code are very general, and do not contain any limitation that the false statement made shall have any bearing upon the matter in issue. It is sufficient to bring a case within that section if the false evidence is intentionally given, that is to say, if the person making the statement makes it advisedly, knowing it to be false, and with the intention of deceiving the Court, and of leading it to be supposed that that which he states is true. The object of the sanction required by s. 169, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 195, new Code of Criminal Procedure (Act X. of 1882), is to ensure that the prosecution should be instituted after due consideration on the part of the Court, and not where the false evidence was given, or on the part of a Court to which such Court is subordinate. When a Magistrate perused the papers of a case which had been forwarded to him by a Subordinate Magistrate for consideration, and then sent on the papers to the District Superintendent of Police with an

opinion adverse to the prisoner, and the District Superintendent of Police requested the Magistrate to issue a warrant against the prisoner charging him with giving false evidence, it was *held* that the issue of the warrant was a sufficient sanction under s. 169 on the part of the Magistrate.—*Queen v. Mahomed Hossain*, Appellant, 16 W. R. 37. [Macpherson and Ainslie, JJ. Aug 4, 1871.]

A Sessions Judge has no authority under the law to interfere with the order of a Magistrate allowing a prosecution for false evidence.—*Gopal Mozumdar v. Hurro Soondery Boistomee*, 16 W. R. 59; 8 B. L. R. Ap. 20. [Jackson and Glover, JJ. Nov. 23, 1871.]

It would be very undesirable for the High Court, except under very peculiar circumstances, to entertain in the first instance an application to authorize a prosecution for perjury.—*Sheebpershad Chuckerbutty* and others, Petitioners, 17 W. R. 46. [Bayley and Markby, JJ. Mar. 23, 1872.]

WHERE the Judicial Commissioner of Assam, sitting as Sessions Judge, certified, in his capacity of Judge of the chief Civil Court in Assam, that a charge of false evidence was entertained with the sanction of the District Court of Assam, to which the Court of the Munsif of Debrooghur before or against which the offence was committed was subordinate, *held* that the sanction required by s. 169, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 195, new Code of Criminal Procedure (Act X. of 1882), had been given.—*Bapooram Ahum v. Gunga Ram Kacharee*, 17 W. R. 54. [Couch, C.J., and Ainslie, J. April 22, 1872.]

THE commitment of certain persons charged under s. 193, Penal Code, with intentionally giving false evidence in a judicial proceeding, was held to be illegal, inasmuch as the sanction of neither the Court before or against which the offence was committed, nor of some other to which such Court is subordinate, was given. It is not necessary to constitute the offence of abetment that the act abetted should be committed.—Reference in the Case of Dinonath Burooa and others, 18 W. R. 32. [Kemp and Glover, JJ. July 24, 1872.]

A SUBORDINATE Magistrate refused to grant sanction for a prosecution on the sole ground that the perjury was alleged to have been committed before his predecessor in office. *Held* that the Subordinate Magistrate was wrong in his construction of the section. The Court before which the perjury is alleged to have been committed is to give the permission. The change of incumbent leaves it still the same Court.—*Pro.*, Nov. 12, 1872, 7 Mad. H. C. R. Ap. 12.

THE words, "such sanction may be given at any time," in s. 169, Criminal Procedure Code (Act XXV. of 1861), must be construed reasonably, and "any time" means a time which does not unduly prejudice the party to be prosecuted, or put him in a worse position than he was before. No appeal lies against a Judge's order sanctioning such prosecution.—*Sitaram Sahoo v. Rai Babu Sheewgolam Sahoo Bahadoor*, 18 W. R. 62. [Glover and Pontifex, JJ. Nov. 13, 1872.] But under s. 195 of the new Code of Criminal Procedure (Act X. of 1882), no Court shall take cognizance of an offence punishable under s. 193 of the Penal Code unless sanction has been previously obtained.

WHEN it is intended to charge a person with having made a false statement in the Court of a Magistrate, or (alternatively) a false statement in the Court of a Subordinate Judge, there must be a proper sanction for a prosecution on each branch of the alternative. A sanction for a prosecution must designate the Court where the false statement was alleged to have been made, and the occasion on which it was committed. It is desirable, if not necessary, that in the sanction for prosecution the description of the offence intended to be prosecuted should be stated in general terms, although details may be omitted.—*In re Balaji Sitaram*, 11 Bom. H. C. R. 34. [West and Nánabhái Haridás. Mar. 18, 1874.]

IN a case in which the High Court was asked to sanction a prosecution for giving false evidence of a plaintiff in a suit before a Small Cause Court, which Court had refused such leave to defendant, it was *held* that the High Court would not be justified in exercising the discretion vested in them unless it appeared very clearly that there were strong grounds for granting the sanction.—*Money Mohun Dey v. Dinonath Mullick*, 22 W. R. 11. [Kemp and Birch, JJ. April 28, 1874.]

THE Court declined in this case to say that a conviction was bad, because the Judge who tried the case, and the Judge who sanctioned the criminal proceedings, was the same.—*Queen v. Subal Chunder Gangooly*, 22 W. R. 16. [Markby and Mitter, JJ. May 18, 1874.]

As soon as it becomes apparent that a complaint is of an offence falling within s. 468 (b) of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 195 of the



new Code of Criminal Procedure (Act X. of 1882), and that it is made without sanction, the Magistrate is not competent to entertain it.—*Pro.*, Feb. 16, 1875, 8 Mad. H. C. R. Ap. 2.

**Held** that the sanction referred to in s. 468 and 469 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882), when given by any of the Courts empowered under the Act, cannot be disturbed by a superior Court. *Per* Turner, Offg. C.J., and Pearson and Oldfield, JJ.—When sanction is refused by one of the Courts, the refusal does not deprive the other Courts of the discretion given to them. *Per* Spankie, J.—When sanction is refused by one of the Courts, the refusal does not deprive the superior Courts of the discretion given to them.—*Barkat-ul-lah Khan v. Rennie*, I. L. R., 1 All. 17. [*Turner, Offg. C.J., and Pearson, Spankie, and Oldfield, JJ.* July 3, 1875.]

A CONVICTION having been set aside as arrived at without jurisdiction, no sanction to the prosecution having been obtained from the Court against which the offence was committed, formal sanction was obtained, the accused re-arrested, and, without being called upon to plead, ordered to undergo the sentence previously passed. **Held** that the whole of these proceedings were illegal.—*Edoo Khansamah*, 24 W. R. 64. [*Komp and Glover, JJ.* Nov. 9, 1875.]

IN 1872 P and two others obtained a decree against S in the Bombay Court of Small Causes. For the enforcement of this decree they presented to the District Judge of Tháná an application in the form prescribed by s. 212 of the Code of Civil Procedure, alleging that the judgment-debtor had two salt-pans at Bombay, in the Tháná District. The application did not, however, on the face of it, state whether it was made under the Civil Procedure Code or under Act IX. of 1850. The Judge entrusted the application for execution to the Subordinate Judge, who ordered an attachment and sale of these salt-pans. In the course of the proceedings which followed, the Subordinate and District Judges considered that J N had given and fabricated false evidence. On the 25th October 1875, the District Judge gave his sanction for the prosecution of J N and others. J N prayed the High Court to annul the sanction, alleging in his petition that the proceedings before the Subordinate Judge were, *ab initio, coram non iudice*, as he had no authority to attach and sell immovable property in execution of a decree of the Bombay Court of Small Causes. **Held** that, although the Court of Small Causes at Bombay has power to enforce its decree against moveable property only, yet if that decree be transmitted to a Court to which the Code of Civil Procedure applies, the latter can, under s. 287 of that Code, enforce it against immovable property also. *Quære*—Whether a Court executing the decree of a Small Cause Court under s. 78 of Act IX. of 1850 could enforce it against immovable property? **Held** also that the District Judge was quite within his province in giving his sanction to the prosecution. In *Reg. v. Hayatibibi* (unreported), West and Nánábhái Haridás, JJ., **held** that the High Court had no authority to interfere with the discretion to grant a sanction for prosecution, even in a case in which the High Court would not have granted the sanction itself. See also on this subject *Barkhat-ul-lah v. Rennie*, I. L. R., 1 All. 17. [But see s. 195, Code of Criminal Procedure, 1882, p. 171].—*In re Jagjiván Nánábhái*, I. L. R., 1 Bom. 82. [*West and Nánábhái Haridás, JJ.* Jan. 19, 1876.]

WHERE the High Court sanctions a prosecution for perjury, it is implied that the proper legal procedure will be adopted, and the proceedings instituted in a Court having jurisdiction to entertain the charge.—*Keerut Singh v. Narain Parsee*, 25 W. R. 14. [*Glover and Mitter, JJ.* Jan. 21, 1876.]

FOR the purposes of s. 408 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), a Magistrate of the first class is subordinate to the Magistrate of the district. A sanction given by the latter to prosecute a person for intentionally giving false evidence before the former is therefore legal and sufficient, notwithstanding the refusal by the former to give such sanction himself. *Semble*.—That the Sessions Court has not power to give such sanction.—*Imperatix v. Padmanabh Pai*, I. L. R., 2 Bom. 384. [*Melville and Pinhey, JJ.* Oct. 4, 1877.]

S. 466 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 197 of the new Code of Criminal Procedure (Act X. of 1882), extends to all acts ostensibly done by a public servant, *i. e.*, to acts which would have no special signification except as acts done by a public servant; therefore, a mahálkari charged with fabricating the proceedings of a case decided before himself could not be tried on that charge except with the sanction specified in that section. Para 1 of s. 466, which mentions a sanction by Government or its deputy, is intended to apply, at least chiefly, to the cases of persons

specially responsible to Government, such as accountants who have failed in their duty; and para. 2, which speaks of sanction by Government alone, to persons professing to exercise certain authority, and with that pretext doing an act which is impeached by a subject, on the ground of its being wholly unwarranted, or of an excess or impropriety of some kind. A mahalkari falls within the class of public servants contemplated in para. 1 of s. 466. A sanction for his prosecution by the District Magistrate is therefore sufficient. For the purpose of sanctioning a criminal prosecution under s. 468 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), the Court of the Subordinate Judge is subordinate to that of the District Judge, notwithstanding that the subject-matter of the litigation in the former Court involves more than Rs. 5,000, and an appeal lies direct to the High Court from the decision of that Court in that matter. A prosecution commences when a complaint is made, the reception of the complaint being a stage of the judicial proceedings towards conviction.—*Imperatrix v. Lakshman Sakharam*, I. L. R., 2 Bom. 481. [West and Pinhey, JJ. Dec. 20, 1877.]

**HELD** (Oldfield, J., dissenting) that for the purposes of s. 468 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882), a Magistrate of the First Class is subordinate to the Magistrate of the District, and consequently application for sanction to prosecute a person for intentionally giving false evidence before the former may, where such sanction is refused by the former, be made to the latter, and not to the Court of Session, which has not power to give such sanction.—In the Matter of the Petition of Gur Dayal, I. L. R., 2 All. 205. [Stuart, C.J., and Pearson, Spaukie, and Oldfield, JJ. Mar. 27, 1879.]

**L** MADE a complaint against **S** by petition, in which he only charged **S** of having committed offences punishable under ss. 193 and 218 of the Penal Code, but in which he also accused **S** of acts which, if the accusation had been true, would have amounted to an offence punishable under s. 466 of that Code with seven years' imprisonment. The Magistrate inquired into the charges against **S** under ss. 193 and 218 of the Penal Code, and directed his discharge. **L** then applied to the Court of Session to direct **S** to be committed for trial on the ground that he had been improperly discharged, which the Court of Session did; and **S** was committed for trial charged under s. 218 of the Code, and was acquitted by the Court of Session. The Court of Session then, under s. 472 of Act X. of 1872 (corresponding with s. 477 of Act X. of 1882), charged **L** with offences punishable under ss. 193, 195, 211, and 211 and 109 of the Penal Code, and committed him for trial. **Held** that such commitment was not bad by reason that an offence under s. 193 of the Penal Code is not exclusively triable by a Court of Session. **Held** also, *per* Stuart, C.J. (Spaukie, J., doubting).—That the High Court is competent, in the exercise of its power of revision under s. 297 of Act X. of 1872 (corresponding with s. 439 of Act X. of 1882), to quash a commitment made by a Court of Session under the provisions of s. 472 of that Act (or s. 477 of the Act of 1882). **Held** also, *per* Spaukie, J.—That the Court of Session was competent, notwithstanding that **L** had only charged **S** with offences under ss. 193 and 218 of the Penal Code, to charge **L** with offences under ss. 195 and 211, if such offences had come under its cognizance.—*Empress v. Lachman Singh*, I. L. R., 2 All. 398. [Stuart, C.J., and Spaukie, J. June 11, 1879.]

**A** PERSON who makes a false statement upon oath before a police-patel acting under s. 13 of Bom. Act VIII. of 1867 gives false evidence within the meaning of s. 191 of the Penal Code, and is punishable under s. 193; but his trial for that offence requires no sanction, a police-patel not being a Criminal Court within the definition of s. 4 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 6 of the new Code of Criminal Procedure (Act X. of 1882), although offences under ch. 10 of the Penal Code, committed before the same officer, cannot be tried without a sanction.—*Imperatrix v. Irbasapa*, I. L. R., 4 Bom. 479. [M. Melvill and F. D. Melvil, JJ. April 29, 1880.]

**AN** instruction to the Magistrate of the District by the Court of Session, contained in the concluding sentence of its judgment in a case tried by it, to prosecute a person for giving false evidence before it in such case, does not amount to sanction to a prosecution of such person for such offence within the meaning of s. 468 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882), that section (468) supposing a complaint, or at least an application for sanction for a complaint. Where a Court thinks that there is sufficient ground for inquiring into a charge mentioned in ss. 467, 468, or 469 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882), it should proceed under s. 471 of that Act (or s. 476 of the new Act). Attention of the Court of Session in this case directed to *Queen v. Baijoo Lal* (I. L. R., 1 Cal. 450).—*Empress v. Gobardhan Das*, I. L. R., 3 All. 62. [Pearson, J. June 26, 1880.]

THE Courts that have jurisdiction to grant a sanction to proceedings under s. 468 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882) are the Court before which the offence was alleged to have been committed, and the Courts to which such Court is subordinate. *Per* Garth, C.J.—Where a case is settled without evidence being gone into, the Court in which the suit was brought, even if it have power to sanction criminal proceedings against any of the parties to such suit under s. 468 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882), is guilty of great impropriety and discretion in so doing, inasmuch as it can have had no opportunity of judging of the *bona fides* of the claim or defence. *Semble*.—A petition presented under Reg. XVII. of 1860, not requiring verification, cannot, from the fact of its being verified unnecessarily, be made the subject of a prosecution for giving false evidence.—In the Matter of the Petition of Kasi Chunder Mozumdar; Juggut Chunder Mozumdar *v.* Kasi Chunder Mozumdar, I. L. R., 6 Cal. 440; 7 C. L. R. 330. [Garth, C.J., and Maclean, J. Sep. 29, 1880.]

THE Māmlatdār's Court, constituted by Bom. Act III. of 1876, is a Civil Court within the meaning of s. 468 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882). Therefore a complaint of an offence mentioned in that section, when such offence is committed before or against the Māmlatdār's Court, shall not be entertained in the Criminal Courts, except with the sanction of the Māmlatdār's Court, or of the High Court to which it is subordinate.—*In re* Savanta, I. L. R., 5 Bom. 137. [Kemball and Melvill, JJ. Sep. 1880.]

ON an application to a Munsif for sanction to prosecute, the following order was made upon the petition: "If the petitioner thinks there is sufficient evidence against A, I have no objection to give such sanction." *Held* that the order was not a sufficient sanction to support a prosecution.—Jadunath Hazra *v.* Anuoda Prosad Sircar, 11 C. L. R. 53. [Prinsep and O'Kinealy, JJ. May 22, 1882.]

WHEN a Sessions Judge on appeal annuls the conviction of a Magistrate for want of jurisdiction, and omits to order a re-trial at the time under s. 284 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 423 of the new Code of Criminal Procedure (Act X. of 1882), he is not precluded, by virtue of s. 464 of the Code of 1872 (or s. 367 of the Code of 1882), from passing such an order subsequently. The order annulling the conviction in such a case does not amount to an acquittal. Where sanction is given for a prosecution for perjury, and the case tried by an incompetent Court, and the conviction quashed on appeal, a competent Court may re-try the prisoner upon the subsisting sanction without any order of the Appellate Court by whom the conviction is quashed. The evidence of a witness, given in a proceeding pronounced to be *coram non judice*, cannot be used under s. 33 of the Evidence Act, if the witness is dead, on a re-trial before a competent Court. R charged A with breach of trust, and S gave evidence in support of the charge. A being acquitted, R was tried for making a false charge, and S for perjury. *Held* (1) that the depositions given by witnesses in the first case could be used against R in the second case, but not against S, under s. 33, Evidence Act; (2) that the word "questions" in s. 33 does not mean "all the questions," and that, though additional issues were involved in the second trial, yet the evidence as to the issues common to both trials was properly admitted at the second trial against R.—*In re* Rāmi Reddi, I. L. R., 3 Mad. 48. [Innes and Muttusāmi Ayyār, JJ. May 2, 1881.]

It is competent for a Court which has granted sanction to a prosecution under s. 195 of the Criminal Procedure Code to give a fresh sanction, if the one previously granted has expired by efflux of time. The limitation of six months mentioned in s. 195 means that a Magistrate shall not take cognizance of a case under a sanction which is more than six months old, not that the whole prosecution must be completed within that period. *Held*, therefore, where sanction to a prosecution had been granted under s. 195, and the prosecution had been instituted, and the Magistrate, in consequence of evidence of the complainant not being procurable, had ordered "the case to be shelved for the present," and the complainant, after the six months mentioned in s. 195 had expired, applied to the Magistrate to re-open the proceedings, that it was competent for the Magistrate, having once taken cognizance of the case, and it still remaining on his file undetermined, to take it up again at any moment, and proceed with the prosecution without fresh sanction.—In the Matter of the Petition of Gulab Singh *v.* Debi Prosad, I. L. R., 6 All. 45. [Straight, Offg. C.J. July 23, 1882.]

ON an application for sanction to prosecute under s. 468 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), it is not competent to the Court to go beyond the record in determining whether or not sanction should be granted when the record itself discloses

no foundation for the charges. *In re Kasi Chunder Mozumdar* (I. L. R., 6 Cal. 440) approved.—*Zamindár of Sivagiri v. Queen*, I. L. R., 6 Mad. 29. [Innes, Off. C.J., and Kernan, J. Aug. 30, 1882.]

THE Court of an Assistant Collector is not subordinate to that of the Magistrate of the District within the meaning of s. 195 of the Criminal Procedure Code. Sanction to prosecution granted under s. 195 should specify the Court or other place in which, and the occasion on which, the offence was committed, and such sanction should not be granted without a preliminary inquiry, where such inquiry is "necessary" within the meaning of s. 476 of the Code. Where sanction to the prosecution of a person for the offence of using certain evidence known to be false was granted by a Court to which the Court in which such evidence was used was not subordinate, and such sanction did not specify the place in which, and the occasion on which, such offence was committed, and the Court granting the sanction did not make any preliminary inquiry, although such an inquiry was "necessary" in the sense of s. 476 of the Criminal Procedure Code, *held* that the indispensable preliminary conditions of s. 195 of the Code being wanting to the prosecution, the committing Magistrate was incompetent to entertain the case, and the commitment was illegal, and should be quashed. *Held* also that the fact that there was not any evidence to connect such person with the use of such false evidence was a defect in law sufficient to justify the quashing of the commitment.—*Empress v. Narotam Das*, I. L. R., 6 All. 98. [Tyrrell, J. Oct. 2, 1883.]

IN a suit on a bond, instituted in the Court of a Munsif, the question whether the defendant had executed the bond or not was referred to arbitration. The arbitration decided that the defendant had not executed the bond, and that it was a forgery. The Munsif dismissed the suit in accordance with the award. The defendant then applied to the Munsif for sanction to prosecute the plaintiff without specifying in his application the offences in respect of which he desired to prosecute. The Munsif granted sanction, merely observing that there were sufficient grounds for sanctioning the prosecution, without giving any reasons or specifying the offence or offences in respect of which sanction was granted. *Held* that the terms in which the Munsif had given his sanction to a prosecution were not sufficiently explicit, and that he should have mentioned the section or sections of the Penal Code under which he authorized criminal proceedings to be taken, as also in a general way the offence or offences to be charged, the date of commission, and the place where committed. Further, that as the Munsif himself had not determined the question of forgery in the suit, he should have made some inquiry to satisfy himself that there were materials to justify a prosecution.—*In the Matter of the Petition of Parsotam Lal v. Bijai*, I. L. R., 6 All. 101. [Straight, J. Oct. 23, 1883.]

A SANCTION to a prosecution for giving false evidence, granted under s. 195 of the Criminal Procedure Code, should specify the place where, and the time when, the alleged false evidence was given, and in substance the assignments of perjury, as also the sections of the Penal Code under which proceedings are authorized.—*In the Matter of the Petition of Hardial v. Durga Prasad*, I. L. R., 6 All. 105. [Straight, J. Oct. 27, 1883.]

BEFORE granting a sanction to prosecute under s. 195 of the Code of Criminal Procedure, a Court is bound to satisfy itself that an offence has been committed; but it is not bound to hold any inquiry as to all the persons who may be implicated in such offence.—*In re Govindam*, I. L. R., 7 Mad. 224. [Hutchins, J. Dec. 18, 1883.]

A DISTRICT Court has jurisdiction under s. 195 of the Code of Criminal Procedure to revoke or grant a sanction granted or refused by a Subordinate Judge's Court.—*Venkata v. Muttusámi*, I. L. R., 7 Mad. 314. [Turner, C.J., and Brandt, J. Feb. 12, 1884.]

A SUB-DIVISIONAL Magistrate, after perusing the calendar of a case tried by a Magistrate subordinate to him, sent for the record, and passed an order under s. 195 of the Code of Criminal Procedure, sanctioning the prosecution of a witness in the case for perjury. *Held* that the order was illegal.—*Queen-Empress v. Kuppu*, I. L. R., 7 Mad. 560. [Kernan and Muttusámi Ayyár, JJ. Aug. 15, 1884.]

A SANCTION to prosecute, when applied for subsequently to the termination of the proceedings in course of which the offence is alleged to have been committed, ought not to be granted, unless the person against whom the sanction is applied for had had notice of the application and an opportunity of being heard.—*Abbilakh Singh v. Khub Lall*, I. L. R., 10 Cal. 1100. [Field and Norris, JJ. Aug. 19, 1884.] But see *In the Matter of the Petition of Krishnanund Das*, I. L. R., 12 Cal. 58, *infra*, p. 171.

SANCTION was granted to prosecute a defendant for forgery and perjury alleged to have been committed by him in a civil suit which was decided against him on the 22nd August 1882. The defendant then preferred an appeal, which was dismissed on the 9th August 1883. The plaintiff commenced criminal proceedings against the defendant, under the sanction, on the 23rd July 1884; but such proceedings having been commenced more than six months after the date of the sanction, the charge was dismissed. The plaintiff then, on the 20th August 1884, applied for a fresh sanction, which was granted on the 13th April 1885. *Held* that, assuming that the Munsif who granted the fresh sanction had power to do so, as to which the Court expressed no opinion, such fresh sanction should not have been granted unless some explanation was given for the omission to commence proceedings within six months; and as no such explanation was given, or any special grounds shown why a fresh sanction should be given, the Munsif did not exercise a sound discretion in granting such fresh sanction, and consequently his order was set aside.—*Joydeo Singh v. Harihar Pershad Singh*, I. L. R., 11 Cal. 577. [Mitter and Norris, JJ. May 22, 1885.]

On the 2nd August 1884, a Munsif, who was of opinion that, in the course of a suit which had been tried before him, certain persons had committed offences under ss. 193, 463, and 471 of the Penal Code, and that the prosecution of these persons was desirable, made an order which he described as passed under s. 643 of the Civil Procedure Code, and in which he directed that the accused should be sent to the Magistrate, and that the Magistrate should inquire into the matter. In May 1885, upon an application by one of the accused to the District Court to “revoke the sanction for prosecution granted by the Munsif,” it was contended that the “sanction” had expired on the 2nd February 1885, and had ceased to have effect. *Held* by the Full Bench that the Munsif’s order, whether it was or was not a sanction, was a sufficient “complaint” within the meaning of s. 195 of the Criminal Procedure Code, and that the limitation period prescribed by that section was applicable to the case. *Per* Petheram, C.J., and Straight, J.—That, considering that s. 643 of the Civil Procedure Code was closely similar to s. 476 of the Criminal Procedure Code, the Munsif’s order might be taken as having been passed under the latter section. Also *per* Petheram, C.J., and Straight, J.—The words in s. 195 of the Criminal Procedure Code, “except with the previous sanction or on the complaint of the public servant concerned,” must be read in connection with s. 476, which was enacted with the object of avoiding the inconvenience which might be caused if a Munsif, or a Subordinate Judge, or a Judge, were obliged to appear before a Magistrate, and make a complaint on oath, like an ordinary complainant, in order to lay the foundation for a prosecution. The language of s. 476 indicates that where a Court is acting under s. 195, a complaint in the strict sense of the Code is not required, and that the procedure therein laid down constitutes the “complaint” mentioned in s. 195.—*Ishri Prosad v. Sham Lal*, I. L. R., 7 All. 871. [Petheram, C.J., and Straight, Brodhurst, and Tyrrell, JJ. July 4, 1885.]

No notice is necessary to the person against whom it is intended to proceed, before the Court before which the alleged offence has been committed can, under s. 195 of the Criminal Procedure Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section.—In the Matter of the Petition of Krishnanund Das; *Krishnanund Das v. Hari Bern*, I. L. R., 12 Cal. 58. [Pigot and O’Kinealy, JJ. Sep. 22, 1885.] But see *Abbilakh Singh v. Khub Lal*, I. L. R., 10 Cal. 1100, *supra*, p. 170.

IN cases not of the kind contemplated in s. 337 of the Criminal Procedure Code (Act X. of 1882) it is not competent to a Magistrate holding a preliminary inquiry to tender a pardon to the accused, or to examine him as a witness. Statements made by the accused in the course of such examination are irrelevant; and, if subsequently retracted, cannot be used against him, or subject him to a prosecution for giving false evidence, under s. 193 of the Penal Code (Act XLV. of 1860). *Reg. v. Hanmanta* (I. L. R., 1 Bom. 610) followed. When a pardon is legally tendered to the accused under s. 337 of the Criminal Procedure Code (Act X. of 1882), and the accused makes a statement on oath which he retracts in a subsequent judicial proceeding, a proper sanction is necessary for a prosecution for giving false evidence on each branch of the alternative charges. *In re Balaji Sitaram* (11 Bom. H. C. R. 34) followed. Such sanction can only be granted before, and not after, the commencement of the prosecution.—*Queen-Empress v. Dálá Jivá*, I. L. R., 10 Bom. 190. [Birdwood and Jardine, JJ. Dec. 10, 1885.]

S. 195 of the Criminal Procedure Code (Act X. of 1882) runs as follows:

No Court shall take cognizance—

(a) of any offence punishable under ss. 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate;

(b) of any offence punishable under ss. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

(c) of any offence described in s. 463, or punishable under ss. 471, 475, or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no such sanction shall remain in force for more than six months from the date on which it was given.

For the purposes of the section, every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

#### TRANSFER OF CASE.

THE High Court does not exercise its powers of transfer in a case of forgery or perjury solely on the ground that the Judge who is to try the case has formed an opinion that the document has been forged or the perjury committed. But when the transfer can be made without the risk of any improper interference with the course of justice, and without much inconvenience to the parties and witnesses, the transfer would be proper not only as a fair concession to the accused person, but as a means of relieving the Judge from a position which he would himself desire to avoid.—*Ex parte Arunachella Reddi*, 5 Mad. H. C. R. 212. [Scotland, C.J., and Holloway, J. Mar. 4, 1870.]

#### 194. Whoever gives or fabricates false evidence, intending thereby to

Ct. of Ses.  
Uncog.  
Warrant.  
Not bailable.  
Not comp.

Giving or fabricating false evidence with intent to procure conviction of capital offence.

cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by this Code "or the law of England,"\* shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

WHERE a man burns his own house, and charges another with the offence of doing so, he should be convicted and sentenced under s. 211 (and not under s. 195) of the Penal Code.—*Queen v. Bhugwan Ahir*, 8 W. R. 65. [Loch and Hobhouse, JJ. Aug. 28, 1867.]

In the trial of a prisoner for murder, a witness stated on oath before the Sessions Court that another had committed the murder, whereas before the Magistrate he had stated, as was the fact, that the prisoner had committed the murder. *Held* that such witness was guilty under s. 193, and not under s. 194 of the Penal Code, as he did not know that he would cause a conviction for murder.—*Queen v. Hardyal*, 3 B. L. R. A. Cr. 35. [Norman and Jackson, JJ. July 13, 1869.] Followed in *Queen v. Matji Khowa*, 3 B. L. R. A. Cr. 36; *Queen v. Normal*, 4 B. L. R. A. Cr. 9.

\* The words quoted have been inserted by Act XXVII. of 1870, s. 7.

**196.** Whoever corruptly uses or attempts to use, as true or genuine evidence, any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Using evidence known to be false, or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

THE provision of the Penal Code (s. 196) against using false evidence is not ordinarily intended to apply to subornation of perjury. To establish an offence under s. 196, it must be shown that the accused made some use of the false evidence after it was in existence.—*Queen v. Sheik Suffuruddee*, Ind. Jur. O. S. 122. [Steer and Campbell, J.J. Nov. 24, 1862.]

A PERSON who uses in Court false documents as true, besides swearing to their authenticity, may be convicted under s. 196 of the Penal Code only, and not under s. 471 also.—*Queen v. Oodun Lall*, 3 W. R. 17. [Glover, J. May 23, 1865.]

USING and attempting to use false evidence are two distinct and separate offences, and should have been charged in separate heads of the charge. As the above offences are not punishable under s. 193 without the application of s. 196 of the Penal Code, both sections should have been entered in the charge.—2 W. R. Cr. L. 9, No. 94 of 1865.

WHERE a prisoner produced as evidence an account-book, one page of which had been fraudulently abstracted, and another substituted for it, *held* that he was not guilty of the offence of attempting to use as genuine, fabricated evidence, unless he knew of the forgery, and intended to use the forged evidence for the purpose of affecting the decision on the point at issue when the book was tendered.—*Queen v. Muddoo Soodun Shaw*, 7 W. R. 23. [Kemp and Markby, J.J. Jan. 26, 1867.]

THE offence imputed against an accused, who, in a civil suit, is alleged to have used as genuine a document which he knew to be a forged document, is one cognizable under s. 471 of the Penal Code. Such accused should, therefore, be charged under that section, and not under s. 196 of the Code.—*Empress v. Kherode Chunder Mozumdar*, 1. L. R., 5 Cal. 717; 8 C. L. R. 118. [Jackson and Tottenham, J.J. Mar. 2, 1880.]

WHERE several persons were accused of having given false evidence in the same proceeding, they should be tried separately. A, S, B, D, and P, were jointly tried: A, in respect of three receipts for the payments of money, produced by him in evidence in a judicial proceeding, on three charges of falsely using as genuine a forged document, and on three charges of using evidence known to be false; S, B, D, and P on charges of giving false evidence in the same judicial proceeding as to such payments. The Court (Straight, J.), being unable to say that the accused persons had not been prejudiced in their defence by having been improperly tried together, set aside the convictions, and ordered a fresh trial of each of the accused separately.—*Empress v. Anant Ram and others*, 1. L. R. 4 All. 293. [Straight, J. Feb. 13, 1882.]

THE vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration, they used the deed of sale as evidence in a suit. *Held* that the alteration of the deed did not amount to "forgery" within the meaning of s. 463 of the Penal Code, nor could the deed, after the alteration, be designated a "forged document" as contemplated by s. 470, the intention to cause wrongful loss or wrongful gain or to defraud being wanting; nor could it be said that, in using the deed, the vendees were "dishonestly" or "fraudulently" using as genuine a "forged document," and therefore the use by the vendees of the deed did not constitute an offence under s. 471 of the Penal Code. Further, that their use of it did not render them liable to conviction under s. 196 of that Code.—*Empress v. Fateh*, 1. L. R., 5 All. 217. [Mahmood, J. Oct. 2, 1882.]

L BROUGHT a suit upon a bond, and at the trial sought to support his claim by a letter fabricated probably for the purpose of enabling L to get the bond registered. L was convicted under s. 196 of the Penal Code. *Held* that, if the letter was fabricated for use before the Registrar, it was no valid objection to the conviction.—*Lakshmajee v. Queen-Empress*, 1. L. R., 7 Mad. 289. [Kindersley and Hutchins, J.J. Jan. 18, 1884.]

A IS convicted of an offence under s. 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.—Crim. Pro. Code (Act X. of 1882), s. 232, *illus.*

**197.** Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

**ABETMENT** of the issue of a false certificate of summons. Although there was no chaukidar in the village of the name appearing on the receipt acknowledging due service, the prisoner was acquitted in the absence of proof of guilty knowledge or belief, it being probable that he (an utter stranger in the village) was deceived by the villagers.—*Queen v. Hissamuddeen*, 3 W. R. 37. [Kemp and Seton-Karr, JJ. June 27, 1863.]

**ACCUSED**, a copyist in the Small Cause Court office, framed an incorrect copy of a document filed with a certain record, by adding a name not contained in the original. The incorrect copy was delivered duly certified to one L. D., the applicant for it, and who was probably in collusion with the copyist. This copy was afterwards made use of in a suit against the person whose name had been fraudulently added, and then the fraud was detected. The Magistrate convicted accused under s. 167, and ordered him to pay a fine of Rs. 100. *Held* that s. 167 was not applicable to the case, as it was not shown that accused intended or knew it to be likely that he would cause injury to any person, but that the accused had committed the offence of "issuing or signing a false certificate" within the meaning of s. 197. *Held* also (*per* Barkley, J.) that making what purports to be a copy of a document is not included in the words "preparation or translation of any document," nor in the words "frames or translates that document," as used in s. 167.—*Crown v. Deiva Singh*, Panj. Rec., No. 15 of 1879.

Under the Burma Steam-boilers and Prime-movers Act (XVIII. of 1882), s. 15, any engineer signing any report under s. 9 of that Act which he either knows or believes to be false in any material point shall be deemed to have committed an offence punishable under s. 197 of the Penal Code.

**198.** Whoever corruptly uses or attempts to use any such certificate

Ditto.

Using as true a certificate as a true certificate, knowing the same to be false known to be false, in any material point, shall be punished in the same manner as if he gave false evidence.

**199.** Whoever, in any declaration made or subscribed by him, which

Ditto.

False statement made in declaration which is by law receivable as evidence. declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

A HINDU, who has become a convert to Christianity, is not under a legal obligation to speak the truth, unless his evidence be given under the sanction of an oath on the Holy Gospels, so as to justify a conviction under s. 193 of the Penal Code. A statement made by a witness in a criminal trial not upon oath or solemn affirmation is not a declaration within the meaning of s. 199 of the Penal Code, nor is the witness bound to make a declaration under s. 191.—*In re A. Vedamuttu*, 4 Mad. H. C. R. 185. [Scotland, C.J., and Ellis, J. Dec. 21, 1868.]

A PETITION not bearing the signature of the accused, and therefore not a declaration made or subscribed by him, cannot be made the foundation of a charge or conviction under s. 199 of the Penal Code, but a deposition on oath supporting such a petition, if false, justifies a charge under s. 193 of the Code.—*In the Matter of Ram Rewaz Kooûar*, 7 C. L. R. 536. [Garth, C.J., and Maclean, J. Oct. 22, 1880.]

**200.** Whoever corruptly uses or attempts to use as true any such de-

Ditto.

Using as true such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.



*Explanation.*—A declaration which is inadmissible merely upon the ground of some informality is a declaration within the meaning of sections 199 and 200.

\* Ct. of Ses.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

201. WHOEVER, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;\*

If a capital offence ;

and, if the offence is punishable with transportation for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;†

and, if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.‡

† Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.

and, if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.‡

‡ Presy. Mag.  
or Mag. of  
1st class, or  
Court by  
which offence  
is triable.

#### *Illustration.*

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

IN this section the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code.

CHARGE.—That you, on or about , at , believing or having reason to believe that an offence punishable with death had been committed, caused evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, and that you have thereby committed an offence punishable, &c.—8 W. R. Cr. L. 7, No. 734 of 1867.

A SESSIONS JUDGE, in his address to the jury during the trial of a prisoner charged with offences under ss. 201, 202, and 203 of the Penal Code, made the following remarks: "The two essential points which remain to be proved before a conviction can pass on any of the three sections referred to are, first, the substantial fact of an offence having been committed; and, secondly, the knowledge or reasonable belief on the part of the accused that such was the case: both these are essential parts of the offences specified in the charges against the accused." The High Court pointed out that both these points were not absolutely necessary in order to constitute a legal conviction under ss. 201, 202, or 203 of the Penal Code; for if a person had reason to believe (s. 26) that an offence had been committed, and acted in the manner described in either of those sections, he would be liable to punishment, even although it might subsequently transpire that he was mistaken in his belief.—2 W. R. Cr. L. 1, No. 11 of 1865.

A COMMITS no offence, if, in the exercise of the right of private defence of his property against B, whom he finds near a hole in A's house, and, on being attacked by B, he strikes a blow at random, and in the dark, with a stick in his hand, whereby B is killed. C and D, by assisting A in removing the body of B, cannot be convicted (under s. 201 of the Penal Code) of having caused evidence to disappear, they having no knowledge or belief that an offence had been committed, nor any intention of screening an offender.—Queen v. Pelko Nushyo and others, 2 W. R. 43. [Kemp and Glover, JJ. Mar. 15, 1865.]

PRISONER was present at a murder without being aware that such an act was to be committed. Through fear, he not only did not interfere to prevent the commission of the crime, but joined the murderers in concealing the body. *Held* that he was guilty, not of abetment of murder, but causing the disappearance of evidence of a crime under s. 201 of the Penal Code.—*Queen v. Goburdhun Bera*, 6 W. R. 80. [Loch and Pundit, JJ. Oct. 4, 1866.]

PRISONER was charged under s. 201 of the Penal Code, for that he, knowing or having reason to believe that an offence punishable with death had been committed, with the intention of screening the offender from legal punishment, gave information respecting the offence which he knew or believed to be false. *Held* that the proper order of proof on the part of the prosecution in the present case was to prove (1) that A N was murdered; (2) that the prisoner gave information respecting the offence; (3) that such information was false, and known by him to be so; (4) that he then knew of the commission of the murder; and (5) that his intention was to screen the murder. *Held* also that it was essential to the completeness of the case for the prosecution to show, not only that the information was given, but also that it was false, and known to be so by the prisoner. Further inquiry directed under s. 422, Criminal Procedure Code. (Act XXV. of 1861), corresponding with s. 428 of the new Code of Criminal Procedure (Act X. of 1882).—*Reg. v. Subramanya Pillai*, 3 Mad. H. C. R. 251. [Collett and Ellis, JJ. Dec. 17, 1866.]

S. 201 applies to the causing of disappearance of evidence of an offence committed by another, not by one-self.—5 W. R. Cr. L. 5, No. 242 of 1866.

A CONVICTION on a charge of causing the disappearance of evidence of an offence, which amounted to culpable homicide not amounting to murder, may be good, though there be no proof of who committed the culpable homicide.—*Queen v. Muddun Mohun Bose* and another, 7 W. R. 22. [Kemp and Markby, JJ. Jan. 26, 1867.]

IN order to bring a prisoner within s. 114 of the Penal Code, it is necessary first to make out the circumstances which constitute abetment, so that, "if absent," he would have been "liable to be punished as an abettor," and then to show that he was also present when the offence was committed.—*Queen v. Mussamut Niruni and Monirooddeen*, 7 W. R. 49. [Jackson and Glover, JJ. Mar. 28, 1867.]

S. 201 of the Penal Code refers to prisoners other than the actual criminal, who, by their causing evidence to disappear, assist the principals to escape the consequences of their offences. But the person who commits an offence, and afterwards conceals the evidence of it, cannot be punished on both heads of the charge.—*Queen v. Ramsoonder Shootar*, 7 W. R. 52. [Kemp and Glover, JJ. April 6, 1867.]

WHERE a person is charged (s. 218, Penal Code) with framing a report incorrectly, or (s. 201, Penal Code) giving false information with intent to save offenders from punishment, the issue to be tried is, not whether such alleged offenders were in fact guilty or not, but merely the belief and intention of the prisoners in respect to their guilt. Police-diaries cannot be legally used as substantive evidence or read to the jury.—*Queen v. Hurdut Surma*, 8 W. R. 68. [Seton-Karr and Macpherson, JJ. Sep. 7, 1867.]

ACCORDING to s. 114 of the Penal Code, if the nature of the act constitutes abetment, the abettor, if present, is to be deemed to have committed the offence, though in point of fact another actually committed it.—*Pro.*, Mar. 8, 1869, 4 Mad. H. C. R. Ap. 37.

A PERSON cannot be convicted, under s. 201 of the Penal Code, of causing evidence of the commission of an offence by himself to disappear; nor can he be convicted of the abetment of such an act.—*Reg. v. Kashinath Dinkar and others*, 8 Bom. H. C. R. 126. [Westropp, C.J., and Lloyd, Melvill, Green, and Kembell, JJ. April 12, 1871.]

A PERSON cannot be punished under s. 201 of the Penal Code, where the act which caused the disappearance of the evidence of the commission of an offence was not done with the intention of screening the offender from legal punishment. It is not sufficient that the disappearance of evidence was likely to have the effect of screening the offender.—*Queen v. Toolshee Rai*, 5 N. W. P. 186. [Jardine, J. June 7, 1873.]

THE accused, on his arrest, denied all knowledge of an offence in which he really took part. *Held* that he could not be convicted, under s. 201, of giving false information respecting an offence.—*Fakir-ud-din v. Crown*, Panj. Rec., No. 4 of 1877.

K AND B, having caused the death of J in a field belonging to B, removed J's dead body from that field to his own field with the intention of screening themselves from

punishment. K was convicted on these facts of an offence under s. 201 of the Penal Code. *Held* that that section referred to persons other than the actual offenders, and K could not therefore properly be punished under that section for what he had done to screen himself from punishment. Also that, as a matter of fact, he did not, by removing J's corpse from one field to another, cause any evidence of J's murder, which that corpse afforded, to disappear, and his act, although his object may have been to divert suspicion from himself and B, did not constitute the offence defined in that section.—*Empress v. Kishna*, I. L. R., 2 All. 713. [Pearson, J. Feb. 18, 1880.]

It is necessary, in order to justify a conviction under s. 201 of the Penal Code, that an offence for which some person has been convicted, or is criminally responsible, should have been committed.—*Empress v. Abdul Kadir*, I. L. R., 3 All. 279. [Stuart, C.J., and Pearson, Oldfield, and Straight, JJ. Nov. 11, 1880.]

A WOMAN who, with her infant child, eloped from her husband's house, was afterwards arrested on a charge of murdering the child, which was missing. She made three different statements: (1) that she had left it with her husband; (2) that she had been enticed away by one R, who had taken the child from her; (3) that one H had drowned the child. The Sessions Judge believed the last statement, and convicted her under s. 201 of the Penal Code. *Held* that the conviction was wrong, and must be set aside. S. 201 of the Penal Code does not apply to a case where the person, who is the probable or possible offender, makes statements exculpating himself by inculpating another.—In the Matter of the Petition of Behala Bibi; *Empress v. Behala Bibi*, I. L. R., 6 Cal. 789; 8 C. L. R. 207. [Pontifex and Field, JJ. Mar. 7, 1881.]

IN a trial upon a charge under s. 201 of the Penal Code, the accused made a statement to the effect that he was present at the commission of a murder by two other persons, that he himself took no part in the act, that before the murder was committed one of the persons named pulled off a razai from the bed on which the deceased was sleeping, and that, in his presence, the razai was subsequently concealed in a stack. It was proved that the razai belonged to the deceased, that it was found concealed in a stack, and that it was pointed out by the accused to the police. The accused was convicted of concealing evidence of the murder, with the intention of screening the offender from legal punishment, under s. 201 of the Penal Code. *Held* that the conviction must be quashed, inasmuch as, if the razai had not been concealed or destroyed, its presence or existence would have been no evidence of the murder. A person who is concerned as a principal in the commission of a crime cannot be convicted of the secondary offence of concealing evidence of the crime.—*Queen-Empress v. Lalli*, I. L. R., 7 All. 749. [Petheram, C.J., and Brodhurst, J. April 11, 1885.]

BEFORE an accused can be convicted of an offence under s. 201 of the Penal Code, it must be proved that an offence, the evidence of which he is charged with causing to disappear, has actually been committed, and also that the accused knew, or had information sufficient to lead him to believe, that the offence had been committed. *Empress v. Abdul Kadir* (I. L. R., 3 All. 279) followed.—*Matuki Misser v. Empress*, I. L. R., 11 Cal. 619. [Mitter, Macpherson, and Prinsep, JJ. May 13, 1885.]

S. 201 of the Penal Code does not apply to the case of a criminal causing disappearance of evidence of his own crime, but only to the case of a person who screens the principal or actual offender. *Queen v. Ram Soonder Shootar* (7 W. R. 52), *Reg. v. Kashinath Dinkar* (8 Bom. H. C. R. 126), *Empress v. Krishna* (I. L. R., 2 All. 713), *Empress v. Behala Bibi* (I. L. R., 6 Cal. 789), and *Queen-Empress v. Lalli* (I. L. R., 7 All. 749), referred to.—*Queen-Empress v. Dungar*, I. L. R., 8 All. 252. [Brodhurst, J. April 5, 1886.]

THE above section refers to persons (other than the actual criminals), who, by their causing evidence to disappear, assist the principal to escape the consequences of his offence. Thus, in *Reg. v. Kashinath Dinkar* (8 Bom. H. C. R. 126), Lloyd, J., observed: "This and the two following sections commence with precisely the same words. Now, as there is no law which obliges a criminal to give information which would convict himself, it is evident that ss. 202 and 203 could not apply to the person who committed the offence, i.e., the offence which he knew had been committed." A prisoner pushed a woman, who fell into a boat, and died then and there. Afterwards he set the boat with the corpse in it afloat down the river, and so concealed the evidence of his offence. It was held that he was not guilty of the offence of causing evidence to disappear.—*Queen v. Ramsoonder Shootar*, I. B. C. C. Circ. 19; 2 Mad. Jur. 282.

**202.** Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

*Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.*

In this section the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code.

WHERE the *corpus delicti* is not established, there can be no conviction for culpable homicide not amounting to murder, nor for intentional omission to give notice of an offence which has not been proved to have been committed.—Queen v. Ram Ruchea Singh and others, 4 W. R. 29. [Kemp and Seton-Karr, JJ. Nov. 28, 1865.]

A KARNAM is a private person in respect of ss. 176 and 202 of the Penal Code, there being no law binding him in any special way to report or prevent crime. He is therefore not liable to punishment for not reporting the commission of a crime not enumerated in ch. 4 of the Code of Criminal Procedure, 1882.—Mad. H. C., Rul., Mar. 12, 1867; 2 Mad. Jur. 289.

AN omission to give information that a crime has been committed does not, under s. 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation. A private individual is not bound by any law to give information of any offence which he has seen committed.—Queen v. Khadim Sheikh, 4 B. L. R. A. Cr. 7. [Loch and Glover, JJ. Nov. 23, 1869.]

PER KEMP, J.—Before a person can be convicted of an offence under s. 202, Penal Code, there must be legal evidence (1) that he has knowledge or reason to believe that some offence has been committed; (2) an intentional omission to give any information respecting that offence; and (3) that he is legally bound to give information of that offence. In this case, the Sessions Judge having found that there was no evidence at all, s. 422, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 428, new Code of Criminal Procedure (Act X. of 1892), did not apply, as that section only authorizes an Appellate Court to direct additional evidence to be taken where there is some *prima facie* evidence bearing upon the guilt or innocence of the accused, but not where there is no evidence at all. —Per Glover, J.—The Sessions Judge, having found that an offence was committed, and that the accused were bound by law to give information respecting it, but that there was not on the record evidence of their omission to give that information, was competent, under s. 422, to order the deficiency to be supplied; the object of that section being the prevention of a guilty person's escape through some careless or ignorant proceedings of a Magistrate, or the vindication of a wrongfully accused person's innocence where the same carelessness or ignorance has omitted to record circumstances essential to the elucidation of truth.—Woodoy Chand Mookhopadhyay, Petitioner, 18 W. R. 31; 9 B. L. R. Ap. 31. [Kemp and Glover, JJ. July 22, 1872.]

TO WARRANT a conviction under s. 202, Penal Code, the prosecution must prove that the accused knew or had reason to believe that an offence had been committed of which he was bound to give information. Mere omission to inquire into the truth of rumours that reached him, or statements that were made to him, does not constitute an offence under that section. Held also that where an act is capable, upon the evidence, of two constructions, the accused is entitled to the benefit of that one which is most favourable to his innocence.—In the Matter of Beembadhur Dass, 1 Shome's Rep. 29.

**203.** Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.*

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

A PRISONER's intention is immaterial to his conviction, under s. 203 of the Penal Code, of having given false information respecting an offence committed. Thus, where a chaukidar, having found a corpse with wounds on the throat and jaw, gave information at the thana that the deceased had died of cholera, and that there was nothing suspicious in the matter, he was convicted under s. 203 of the Penal Code.—*Queen v. Cheetour Chowkedar*, 1 W. R. 18. [Glover, J. Sep. 26, 1864.]

THE elements of an offence under s. 203 of the Penal Code are: 1st, that the accused should know or have reason to believe that an offence has been committed; 2nd, the giving of information respecting such offence, which the accused knew or believed to be false. Therefore, in order to constitute this offence, it would not be necessary that the accused should be aware of the circumstances attending the death of M, but only that he should know or have reason to believe that M had been killed by criminal means, or that otherwise some offence had been committed; and if, with such knowledge or belief, the accused gave any information in relation thereto, which he knew or believed to be false, he would commit the offence.—9 W. R. Cr. L. 2, No. 135 of 1868.

To justify a conviction for giving false information with respect to an offence under s. 203 of the Penal Code, it must be proved, not only that the person charged had reason to believe that an offence had been committed, but that the offence had actually been committed, and that the accused knew or had reason to believe that the offence had been actually committed.—*Queen v. Joynarain Patro and others*, 20 W. R. 66. [Jackson and Mitter, JJ. Sep. 15, 1872.]

**204.** Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

WHERE the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond (which tended to show that defendant had paid more than it was alleged had been paid by him), snatched up the bond which was lying besides the arbitrator, ran away, and refused to produce it, *held* that the offence committed was not theft, but secreting a document under s. 204 of the Penal Code.—*Subramania Ghanapati v. Reg.*, I. L. R., 3 Mad. 261. [Turner, C.J., and Muttusami Ayyar, J. Sep. 2, 1881.]

A PERSON merely withholding a document, or not producing it on a false pretence, cannot be convicted of the offence of secreting such document specified in this section.—3 N. A., N. W. P., Part I., 64.

**205.** Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

UNDER s. 205 of the Penal Code, it is criminal to personate an imaginary person.—*Queen v. Bitto Kahar*, 1 Ind. Jur. O. S. 123. [Seton-Karr and Campbell, JJ. Nov. 20, 1862.] Dissented from in *In re Kadar Revuttan and Nayangasia Revuttan*, 4 Mad. H. C. R. 18.

FRAUDULENT gain or benefit to the offender is not an essential element of the offence of false personation under s. 205 of the Penal Code, and a conviction for false personation may be upheld, even where the personation is with the consent of the person personated.—*Ex parte Suppakon*, 1 Mad. H. C. R. 450. [Scotland C.J., and Frere, J. Nov. 23, 1863.]

Presy. Mag.  
or Mag. of  
1st class.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

It is necessary to a conviction for false personation under s. 205 of the Penal Code that the accused should have assumed the name and character of the person he is charged with having personated. The fact that he presented a petition in Court in the name of that individual, *held*, under the circumstances of this case, to be insufficient to show any intention of falsely personating such person.—*Queen v. Narain Acharj*, 8 W. R. 80. [Glover and Hobhouse, JJ. Nov. 13, 1867.]

TO CONSTITUTE false personation under s. 205, it is not enough to show the assumption of a fictitious name. It must also be shown that the assumed name was used as a means of representing some other known individual. A mere "alias" or "incog." is no crime, for it is no uncommon thing for men to pass under names not their own for the purpose of disguise, in some instances from blameless, in others from indifferent or bad motives. But whatever the motive, the use of an assumed name is not in itself a criminal offence. The gist of the offence under s. 205 is the feigning to be another known person. The whole language of the section clearly imports the acting the part of another person, the actor pretending that he is that person. There are sections of the Penal Code (for instance, ss. 140, 170, 171, and 415) under which the false assumption of appearance or character may be an offence, though no particular individual is meant to be represented, or only an imaginary person; but it is not so here. *Reg. v. Bitoo Kahar* (1 Ind. Jur. 123) dissented from.—*In re Kadar Ravuttan and Ayanaguna Ravuttan*, 4 Mad. H. C. R. 18; 3 Mad. Jur. 146. [Scotland, C.J., and Collett, J. 1867.]

## 206. Whoever fraudulently removes, conceals, transfers, or delivers to

Fraudulent removal or concealment of property to prevent its seizure as a forfeiture or in execution of a decree.

any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine, under a sentence which has

been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

A PERSON who fraudulently removes property, intending thereby to prevent that property from being taken in execution of a decree made by a Collector, commits an offence, and is punishable under s. 206 of the Penal Code, and not under s. 145, Act X. of 1859.—*Gour Chunder Chuckerbutty v. Kishen Mohun Singh*, 10 W. R. 46; 2 B. L. R. S. N. 4. [Loch and Glover, JJ. Sep. 11, 1868.]

To bring a case under s. 206 of the Penal Code, there must be a fraudulent removal, sale, or transfer of property, or of some interest therein, intending thereby to prevent that property from being taken as a forfeiture or in satisfaction of a fine.—*Balmokoond Brojobasi, Petitioner*, 18 W. R. 65. [Kemp and Pontifex, JJ. Nov. 19, 1872.]

## 207. Whoever fraudulently accepts, receives, or claims any property or

Fraudulent claim to property to prevent its seizure as forfeited or in execution.

any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any

property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ditto.

## 208. Whoever fraudulently causes or suffers a decree or order to be

Fraudulently suffering decree for sum not due.

passed against him at the suit of any person for a sum not due, or for a larger sum than is due to

such person, or for any property or interest in property to which such person

Presy. Mag. or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

*Illustration.*

A institutes a suit against Z. Z, knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

**209.** Whoever fraudulently or dishonestly, or with intent to injure or dishonestly making false claim in Court. annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

WHERE a person applies for the execution of a decree which has already been executed, his offence falls, not under s. 209, but s. 210 of the Penal Code. S. 209 relates to false and fraudulent claims in a Court of justice, and is confined to the Civil Court in which the original suit was brought.—Queen v. Beegun Mahtoon, 12 W. R. 37. [Norman and Jackson, JJ. July 26, 1869.]

**210.** Whoever fraudulently obtains a decree or order against any person for a sum not due, or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

WHERE a person applies for the execution of a decree which has already been executed, his offence falls, not under s. 209, but s. 210 of the Penal Code. S. 209 relates to false and fraudulent claims in a Court of justice, and is confined to the Civil Court in which the original suit was brought.—Queen v. Beegun Mahtoon, 12 W. R. 37. [Norman and Jackson, JJ. July 26, 1869.]

S. 258 of the Code of Civil Procedure, which provides that no payment or adjustment of a decree not certified to the Court as in the said section provided shall be recognized by any Court, does not debar a Criminal Court from recognizing such payment where the decree holder is charged with fraudulently executing a satisfied decree.—Queen-Empress v. Pillala, I. L. R., 9 Mad. 101. [Hutchins, J. Oct 6, 1885.]

**211.** Whoever, with intent to cause injury to any person, institutes, or causes to be instituted, any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both ;

and, if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years\* or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

\* "If offence charged be punishable with imprisonment for seven years," the case is triable by the "Court of Session, Presidency Magistrate, or Magistrate of the first class,"—Act X. of 1886, s. 17.

## MEANING OF "OFFENCE."

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

## MAKING FALSE CHARGE.

No charge of making a false charge can be proved while the original charge is still under investigation, as it may turn out that the Court conducting the investigation may say that it is a true charge; but it is not necessary that the charge should be heard and dismissed; it is sufficient if it be not pending at the time of the trial.—Reg. v. Subbanna Gaundan, 1 Mad. H. C. R. 30; 1 Ind. Jur. O. S. 186. [Scotland, C.J., and Phillips, J. Oct. 27, 1862.]

To establish a charge under s. 211, it is necessary to show that the accused knew or had reason to believe that an offence had been committed.—Queen v. Bitto Kabar, 1 Ind. Jur. O. S. 123. [Seton-Karr and Campbell, JJ. Nov. 20, 1862.]

WHEN a prisoner is convicted of having made a false charge of an offence, the nature of the false charge should be stated in the finding, and entered in the calendar.—Reg. v. Arjun, 1 Bom. H. C. R. 87. [Forbes and Westropp, JJ. Nov. 4, 1863.]

THE conviction of a police-inspector for having abetted the bringing of a false charge of murder quashed, because it was not distinctly shown that he preferred the charge *malâ fide*.—Queen v. Muthoorapershad Panday and others, 2 W. R. 9. [Kemp and Glover, JJ. Jan. 18, 1865.]

THE mere fact that an accuser (in this case a subordinate police-officer) is an official in a subordinate position will not shield him from the consequences of false and malicious charges made by him officially.—Queen v. Rhedoy Nath Biswas, 2 W. R. 45. [Glover, J. Mar. 15, 1865.]

WHERE a man burns his own house, and charges another with the offence of doing so, he should be convicted and sentenced under s. 211, and not under s. 195.—Queen v. Bhugwan Akir, 8 W. R. 65. [Loch and Hobhouse, JJ. Aug. 28, 1867.]

Ss. 182 and 211 of the Penal Code distinguished. The latter held to apply to a case of false charge in which the accused in the present case had appeared before the police, and charged the new complainant with having caused the death of the accused's child by poisoning.—Ruffee Mahomed v. Abbas Khan, 8 W. R. 67. [Jackson and Hobhouse, JJ. Sep. 3, 1867.]

S. 211 of the Penal Code applies not only to a private individual, but also to a police-officer who brings a false charge of an offence with intent to injure.—Nabodeep Chunder Sircar, Petitioner, 11 W. R. 2. [Jackson and Markby, JJ. Jan. 12, 1869.]

WHERE a Deputy Magistrate instituted proceedings against a complainant and his witnesses for preferring a false charge of theft before him, it was held that he could not merely rely on the decision in the theft case, but was bound to prove the falsity of the complaint of theft in the presence of the accused.—Queen v. Ram Dass Boistub, 11 W. R. 35. [Jackson and Markby, JJ. April 6, 1869.]

IF a Magistrate considers a complaint false and groundless, he is not bound to issue a summons or warrant. The law vests him with a discretion, which discretion it is incumbent on him to exercise. At the same time, the Magistrate should always take the examination of the complainant.—*In re Ramchurn*, 3 N. W. P. 272. [Turner, J. Aug. 25, 1871.]

IF the charge of voluntarily causing hurt, contained in a petition of complaint, is wilfully false, and made with intent to injure, then the complainant is legally chargeable with the offence described in s. 211 of the Penal Code.—Queen v. Mata Dyal, 4 N. W. P. 6. [Pearson, J. Jan. 13, 1872.]

THE lower Criminal Courts cannot punish, as abettors, persons who gave evidence in support of false charges—or rather, charges found by such Courts to be false. S. 108 of the Penal Code does not contemplate any acts of subsequent abetment, or provide for the punishment of such offences, except when they are such as are defined in ss. 212 to 218.—Queen v. Faun Pundah and another, 18 W. R. 23; 9 B. L. R. Ap. 16. [Kemp and Glover, JJ. July 11, 1872.]



WHERE the charge is one of instituting a false charge of an offence with intent to injure, the actual information which the prisoner made at the thana ought to be given in evidence, and form part of the record.—*Queen v. Hoolas alias Suttoo*, 23 W. R. 32. [Phear and Morris, JJ. Jan. 30, 1875.]

AN offence under s. 211 of the Penal Code includes an offence under s. 182; it is, therefore, open to a Magistrate to proceed under either section, although, in cases of a more serious nature, it may be that the proper course is to proceed under s. 211.—*Bhokteram v. Heera Kolita*, I. L. R., 5 Cal. 184. [Ainslie and Broughton, JJ. April 26, 1879.]

THERE is nothing in s. 211 of the Penal Code which limits the penalty there imposed to cases in which attempts have been made to substantiate false charges in a Court of Justice. A false charge made before the police is therefore punishable under this section.—*Ashrof Ali v. Empress*, I. L. R., 5 Cal. 281. [Mitter and Tottenham, JJ. June 24, 1879.]

IT is necessary for a conviction under s. 211 of the Penal Code that the false charge should have been made to a Court or officer having jurisdiction to investigate and send it up for trial.—In the Matter of the Petition of Jamoona: *Empress v. Jamoona*, I. L. R., 6 Cal. 620. [Mitter and Maclean, JJ. Jan. 22, 1881.]

A CRIMINAL prosecution for an offence under s. 211 is not a condition precedent to the right to sue for damages. The bringing of a civil suit imports no corrupt agreement or compounding of the offence in such a case. *Shama Churn Bose v. Bhola Nath Dutt* (6 W. R., Civ. Ref., 9) followed.—*Viranna and others v. Nagáyyah*, I. L. R., 3 Mad. 6. [Innes and Kernan, JJ. Mar. 14, 1881.]

A PRISONER, charged under s. 211 of the Penal Code with having brought a false charge with intent to injure, by accusing A of having caused the death of a person by doing a rash or negligent act not amounting to culpable homicide under s. 304A, stated at the trial that the original complaint made by him was false, and that he made it unthinkingly. The Sessions Judge treated this statement as a plea of guilty, and sentenced the prisoner to rigorous imprisonment. No record of the prisoner's plea, as required by s. 237 of the Criminal Procedure Code (Act X. of 1872), corresponding with ss. 255 and 271 of the new Code of Criminal Procedure (Act X. of 1882), appeared on the proceedings; nor did it appear that the charge had been explained as well as read to the prisoner, and the Judge considered that the original complaint did not amount to a false charge of an offence under s. 304A. *Held* that the conviction was bad.—*Empress v. Gopal Dhanuk*, I. L. R., 7 Cal. 96; 8 C. L. R. 471. [Morris and Tottenham, JJ. April 21, 1881.]

R CHARGED A with breach of trust, and S gave evidence in support of the charge. A being acquitted, R was tried for making a false charge, and S for perjury. *Held* (1) that the depositions given by witnesses in the first case could be used against R in the second case, but not against S, under s. 33, Evidence Act; (2) that the word "questions" in s. 33 does not mean "all the questions;" and that, though additional issues were involved in the second trial, yet the evidence as to the issues common to both trials was properly admitted at the second trial against R.—*In re Rámi Reddi*, I. L. R., 3 Mad. 48. [Innes and Muttusámi Ayyár, JJ. May 2, 1881.]

THE fact that an offence alleged to have been committed has been compounded is no conclusive answer to a charge made against the prosecutor under s. 211 of the Penal Code. A laid a charge against M for wrongful confinement. The police reported the case as a false one, and A not appearing to prove the complaint, the District Magistrate ordered him to be prosecuted under s. 211 of the Penal Code, and made over the case to a Deputy Magistrate. Upon the hearing of such charge, A pleaded that he had compounded the original charge laid by him against M, and that therefore the charge against him under s. 211 could not lie. The Deputy Magistrate, without hearing any evidence, dismissed the case. *Held* that the course so taken was illegal, as such plea was no conclusive answer to a charge under s. 211.—*Queen-Empress v. Atar Ali*, I. L. R., 11 Cal. 79. [Wilson and Macpherson, JJ. Nov. 8, 1884.]

A PROSECUTION under s. 182 of the Penal Code may be instituted by a private person, provided that he first obtains the sanction of the public officer to whom the false information was given, or of his official superior. *Queen v. Radha Kishan* (I. L. R., 5 All. 36) overruled (see p. 189, *infra*). Where a specific false charge is made, the proper section for proceedings to be adopted under is s. 211 of the Penal Code.—*Queen-Empress v. Jugal Kishore*, I. L. R., 8 All. 382. [Straight, Offg. C.J. May 28, 1886.]

## WHAT CONSTITUTES MAKING OF A FALSE CHARGE.

To constitute the offence of preferring a false charge under s. 211 of the Penal Code, the charge need not be made before a Magistrate; nor need the charge have been fully heard and dismissed; it is enough if it is not pending at the time of trial—*Reg. v. Subbanna Gaundan*, 1 Mad. H. C. R. 30. [Scotland, C.J., and Phillips, J. Oct. 27, 1862.]

To prefer a complaint to the police in respect of an offence which they are competent to deal with, and thereby to set the police in motion, is to institute a criminal proceeding within the meaning of s. 211 of the Penal Code.—*Queen v. Bonomally Sohail*, 5 W. R. 32. [Campbell and Phear, JJ. Feb. 20, 1866.]

INSTITUTING a criminal proceeding with intent to injure, knowing that there is no just or lawful ground for such proceeding, may be treated as a distinct offence from that of falsely charging a person with having committed an offence. A police-officer, though acting upon the information of an informer, may be said to institute a criminal proceeding against the person charged by him; and the consent of his superior officer to such charge will be no guarantee against the consequences of bad faith on his part. The prosecution, when establishing the fact that a police-officer acted knowing there to be no just grounds for proceeding, is bound to call all those on whose statements such officer said he acted.—*Queen v. Nobokisto Ghose*, 8 W. R. 87. [Seton-Karr and Macpherson, JJ. Dec. 31, 1867.]

A FALSELY, and with intent to injure, informed the police that B had stolen property in his house. The police searched B's house, and the information proved to be false. *Held* that A had instituted criminal proceedings, and that he was therefore guilty of an offence under s. 211, and not under s. 182.—*Muthra v. Roora*, Panj. Rec., No. 16 of 1870.

If the charge of voluntarily causing hurt, contained in a petition of complaint, is wilfully false, and made with intent to injure, then the complainant is legally chargeable with the offence described in s. 211 of the Penal Code.—*Queen v. Mata Dyal*, 4 N. W. P. 6. [Pearson, J. Jan. 13, 1872.]

WHERE a person who is interested in the matter, or has a certain official responsibility, says to a police-officer, "A tells me that X has committed a certain offence, and B and C confirm the statement, and I accordingly suspect X," and follows up that statement by an application to have X's house searched, he prefers a charge against X. If such charge be false, he may be convicted under s. 211 of the Penal Code.—*Queen v. Hunooman Lall*, 19 W. R. 5. [Jackson, J. Dec. 4, 1872.]

To constitute the offence of making a false charge under s. 211 of the Penal Code, it is enough that the false charge is made, though no prosecution is instituted thereon. *Queen v. Subanna Gaundan* (1 Mad. H. C. R. 30) followed. Reference in the Case of *Bishoo Barik* (16 W. R. 67) distinguished.—*Empress v. Abul Hasan*, I. L. R., 1 All. 497. [Turner and Spankie, JJ. Nov. 9, 1877.]

To constitute the offence of making a false charge under s. 211 of the Penal Code, it is enough that the false charge is made, though no prosecution is instituted thereon. *Queen v. Subanna Gaundan* (1 Mad. H. C. R. 30) followed. Reference in the Case of *Bishoo Barik* (16 W. R. 77) distinguished.—*Empress v. Salik*, I. L. R., 1 All. 527. [Pearson and Turner, JJ. Dec. 7, 1877.]

WHERE A and F were convicted of culpable homicide, and one G H petitioned the Lieutenant-Governor for their release, on the ground that the accusation was a false one, got up by one S K from enmity, whereupon S K charged G H with making a false charge with intent to injure, and procured his conviction under s. 211, *held* that G H was wrongly convicted under that section. To constitute the offence of "falsely charging a person with having committed an offence" within the meaning of s. 211, something more is necessary than to impute against a person that he has committed an offence. The "charge" contemplated in the section means a charge made in order to the institution of criminal proceedings.—*Ghulam Hussain v. Crown*, Panj. Rec., No. 14 of 1879.]

THE actual institution of criminal proceedings on a false charge is essential to the application of the latter part of s. 211 of the Penal Code, and if a person only makes a false charge, his case falls under the first part of the section irrespective of the fact that the false charge relates to "an offence punishable with death, transportation for life, or imprisonment for seven years or upwards."—*Empress v. Pitam Rai*, I. L. R., 5 All. 215. [Mahmood, J. Sep. 25, 1882.] Concurred in in *Empress v. Parahu*, I. L. R., 5 All. 598.

WHERE a person specifically complains that another man has committed an offence, and does so falsely with the object of causing injury to that person, he is guilty of making

a false charge of an offence under s. 211 of the Penal Code, and not under s. 182.—*Empress v. Arjun*, I. L. R., 7 Bom. 184. [West and Pinhey, JJ. Nov. 2, 1882.]

WHERE no criminal proceeding is instituted on a false charge of an offence of the nature described in the latter part of s. 211 of the Penal Code, the person making such charge is punishable only under the first part of that section.—*Empress v. Parahu*, I. L. R., 5 All. 598. [Brodhurst, J. May 22, 1883.] Concurs in *Empress v. Pitám Rai*, I. L. R., 5 All. 215, *supra*, p. 185.

#### JURISDICTION.

WHERE the Sessions Judge on appeal reversed a conviction passed by a Magistrate, F.P., of an offence under s. 182 of the Penal Code (which the Magistrate, F.P., was competent to try), and directed the Magistrate, F.P., to institute proceedings against the accused under s. 211, considering that, on the complaint which had been made to him, the Magistrate, F.P., was bound to institute proceedings under the latter section, the High Court reversed that part of the order of the Sessions Judge which directed the Magistrate, F.P., to institute proceedings, as the case did not fall within s. 435 of the Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 439 of the new Code of Criminal Procedure (Act X. of 1882), and there was no provision of law giving the Judge jurisdiction to make such an order.—*Reg v. Gopal Lakshuman and another*, 5 Bom. H. C. R. 25. [Couch, C.J., and Newton, J. Mar. 10, 1868.]

A MAGISTRATE has no jurisdiction to convict in a case in which the accused is charged, under s. 211 of the Penal Code, with having falsely instituted a criminal charge of the offence of dacoity.—*Kader Buksh, Petitioner*, 21 W. R. 34. [Kemp and Glover, JJ. Jan. 26, 1874.]

WHERE accused preferred a false charge against complainant under s. 342, and was in consequence tried and convicted by the same Court under s. 211, *held* by a majority of the Court (Campbell, J., dissenting) that the Magistrate had no jurisdiction to try the offender.—*Crown v. Hassan Ali*, Panj. Rec., No. 3 of 1877. This ruling is enacted in s. 476, Code of Criminal Procedure, 1882.

#### JUST AND LAWFUL GROUND.

WHERE a person is charged, under s. 211 of the Penal Code, with having, with intent to injure, falsely charged another with an offence, knowing that there is no just and lawful ground for the same, the party accused should be allowed to show the information on which he acted, and the Judge ought not only to be satisfied that the facts alleged as the ground for making the charge are in themselves untrue and insufficient, but also that they were known to be such to the accused when the charge was made by him.—*Reg. v. Naval-mal valad Umedmal*, 3 Bom. H. C. R. 16. [Couch, C.J., and Newton, J. June 20, 1866.]

MERE rashness in making a charge, which is in fact believed, is not an offence under s. 211. If an accused person does not know at the time he makes the complaint that there are no just and lawful grounds for making the complaint, he cannot be convicted under s. 211. It is not sufficient for a charge under s. 211 of the Penal Code that a person to whom a wrong has been done, or who conceives that a wrong has been done to him, makes a charge or complaint upon evidence, or a statement which is not, or ought not, to be sufficient to satisfy a reasonable mind, if in truth he did not know, at the time he made the complaint, that there was no just and lawful ground for making it. The fact that information upon which a false charge was preferred was not carefully tested by the complainant is not a ground for indictment under s. 211.—*Queen v. Pran Kishen Bid*, 6 W. R. 15; 2 Wyman's Rev., Civ., and Crim. Reporter, 11. [Norman and Campbell, JJ. June 25, 1866.]

UNDER s. 211, Penal Code, "instituting a criminal proceeding" may be treated as an offence in itself apart from "falsely charging" a person with having committed an offence. Where a person is charged with instituting a criminal proceeding with intent to cause injury, knowing that there was no just or lawful ground for such proceeding, it is for the prosecution to make out a distinct case against him; not for the prisoner in the first instance to show that he had just or lawful grounds. The deposition of a witness in a former case is not evidence in a subsequent case in which he is examined, except when put in to contradict him. Where certain portions of a police-officer's diary are used as evidence against him, s. 154 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 172 of the new Code of Criminal Procedure (Act X. of 1882), does not bar the admission of other portions of the diary as explaining the portions so used. Where facts are as consistent with a prisoner's innocence as with his guilt, innocence must be presumed,

and criminal intent or knowledge is not necessarily imputable to every man who acts contrary to the provisions of the law. A Judge should not discuss points of law in summing up to the jury, and he should avoid all the extraneous and unnecessary argument, merely summing up the evidence, and showing how the law applies to it.—Queen v. Nobokisto Ghose, 8 W. R. 87. [Seton-Karr and Macpherson, JJ. Dec. 31, 1867.]

A PERSON may, in good faith, institute a charge which is subsequently found to be false, or he may, with intent to cause injury to an enemy, institute criminal proceedings against him believing there are good grounds for them, but in neither case has he committed an offence under s. 211 of the Penal Code. To constitute this offence it must be shown that the person instituting criminal proceedings knew there were no just or lawful grounds for such proceedings. The averment that the accused knew that there were no lawful grounds for the charge instituted is a most material one.—Queen v. Chidda, 3 N. W. P. 327. [Turner, J. Dec. 1, 1871.]

#### OPPORTUNITY OF SUBSTANTIATING CHARGE.

A DEPUTY Magistrate was held to have acted irregularly in dismissing a complaint, and directing the trial of the complainant under s. 211 of the Penal Code, without recording his reasons for doing so, and without examining all the witnesses tendered by the complainant, or allowing a reasonable time for the attendance of such of the witnesses as were not present.—Queen v. Heera Lall Ghose, 13 W. R. 37. [Jackson and Glover, JJ. April 1, 1870.] Followed in Bishoo Barik, Reference in the Case of, 16 W. R. 67.

UNDER s. 249, Act VIII. of 1869, which extends the provisions of s. 180 to trials of offences under ch. 14, a Deputy Magistrate may dismiss a complaint under that chapter without calling evidence, if in his judgment there is no sufficient ground for proceeding under it. Under the circumstances of this case, however, the High Court considered that the Deputy Magistrate should have made inquiries before charging the complainant with making a false charge under s. 211, Penal Code.—Queen v. Gour Mohun Singh, 16 W. R. 44; 8 B. L. R. Ap. 11. [Kemp and Ainslie, JJ. Sep. 9, 1871.]

WHERE a charge of theft was reported by the police to be false, held that the Magistrate ought first to have inquired into the charge of theft and passed some orders upon it before proceeding under s. 211 of the Penal Code to inquire into the offence of false charge.—Reference in the Case of Bishoo Barik, 16 W. R. 67. [Kemp and Jackson, JJ. Dec. 16, 1871.]

WHERE a charge, made against a peshkar and the police, was dismissed upon the statements of persons examined by the police, and without complainant's witnesses being examined, the order of dismissal was held to be illegal. It was also held to be illegal for the Magistrate to sanction a prosecution under the Penal Code, s. 211, against the complainant without giving him an opportunity to prove his charge.—Syed Nissar Hossein v. Ramgolam Singh, 25. W. R. 10. [Kemp and Pontifex, JJ. Jan. 6, 1876.]

A PETITION was presented to the Joint-Magistrate charging the police with having made a false report of an investigation which they had been directed to make at the instance of the petitioner. The Joint-Magistrate, after reading the police-report, rejected the petition, and directed the petitioner to be prosecuted under s. 211 of the Penal Code for having made a false charge. Held that the Joint-Magistrate should not have made the order without first instituting an inquiry into the truth of the complaint, such as is required by s. 471 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 476 of the new Code of Criminal Procedure (Act X. of 1882).—In the Matter of Choolhaie Telee, 2 C. L. R. 315. [Markby and Prinsep, JJ. April 8, 1878.]

A MAGISTRATE is not competent to discharge the accused in a warrant-case, and order the complainant to be prosecuted for making a false complaint, until he has examined all the witnesses cited by the complainant.—In the Matter of Gangoo Singh and others, 2 C. L. R. 389. [Mitter and Maclean, JJ. May 21, 1878.]

A CHARGE of burglary and theft having been preferred against two persons, the Magistrate, before whom the charge was laid, after comparing the petition of complainant with the papers submitted to him by the police, who had made an inquiry, and reported the charge to be false, directed, without having taken the examination of the complainant, that the case should be struck out, and that proceedings should be instituted against the complainant under s. 182 of the Penal Code. Proceedings were accordingly taken, and the complainant was ultimately tried and found guilty of an offence under s. 211. Held on appeal that the proceedings had been irregular, and should be quashed; that the Magistrate should be directed to re-open the inquiry into the charge of burglary and theft, first

examining the complainant; and that, if after such examination, he should be of opinion that the charge was false, the appellant might be proceeded against under s. 211 of the Penal Code.—In the Matter of Biyogi Bhagut, 4 C. L. R. 134. [Jackson and McDonell, JJ. Mar. 18, 1879.]

A CHARGE of theft was preferred by the petitioner on the 7th October 1878 before the police, who thereupon instituted inquiries which subsequently resulted in their finding the charge unproved. Meanwhile, on the 15th October, the charge was repeated in a complaint before the Magistrate of the District, who directed the complainant and his witnesses to attend on a particular day, but subsequently, without having examined them or the complainant, referred the matter to the Sub-Deputy Magistrate. That officer having reported the charge to be false, the Magistrate, on the 9th November, wrote upon the police-report, which had meanwhile, on the 26th October, been submitted to him, the following direction, *viz.*, "Show as false." On the 19th November a counter-prosecution under ss. 211, 182, and 500 of the Penal Code, was sanctioned, and eventually, on the 22nd May 1879, resulted in the petitioner being convicted. While the counter-prosecution was pending, the petitioner, on the 22nd April, applied to the Magistrate to proceed with his complaint according to law, but was informed that his complaint was dismissed. On the following day the Magistrate recorded the following order: "Dismissed in accordance with my decision recorded in the police-report under s. 147 of the Criminal Procedure Code" (Act X. of 1872), corresponding with s. 203 of the new Code of Criminal Procedure (Act X. of 1882). *Held* that the complaint had been improperly dismissed, and that the order of the Magistrate, dated 23rd April 1879, must be set aside.—*Sheikh Irad Ali v. Nussibunnissa Bibee*, 4 C. L. R. 534. [Morris and White, JJ. June 13, 1879.]

WHERE a person has instituted a charge found to be false by the police, a Magistrate, except under exceptional circumstances, is not justified, merely on a perusal of a police-report, which has found a charge made to be false, in prosecuting the person by whom such charge was preferred, summarily under s. 182 of the Penal Code, but should proceed under s. 211. When a charge is pronounced false by the police, no proceedings should be taken by a Magistrate *suo motu*, until a reasonable interval has shown that the complainant accepts the result of the investigation.—In the Matter of Russick Lal Mullick, 7 C. L. R. 382. [Garth, C.J., and Maclean, J. Nov. 17, 1880.]

BEFORE a person can be put upon his trial for making a false charge under s. 211 of the Penal Code, he must be allowed an opportunity of proving the truth of the complaint made by him; and such an opportunity should be afforded to him, if he desires to take advantage of it, *not before the police, but before the Magistrate*. Magistrates should clearly understand that, whilst the police perform their proper duty in collecting evidence, it is the function of the Magistrate alone to decide upon the sufficiency or credibility of such evidence when collected.—*Govt. v. Karimdad*, 1. L. R., 6 Cal. 496; 7 C. L. R. 467. [Garth, C.J., and Field, J. Dec. 9, 1880.]

A COMMITMENT for trial under the provisions of s. 211 of the Penal Code, for knowingly instituting a false charge with intent to injure the persons accused, is not illegal, merely because the complaint which the accused made has not been judicially inquired into, but is based on the report of the police that the case was a false one.—*Empress v. Salik Roy*, 1. L. R., 6 Cal. 582, 8 C. L. R. 255. [Mitter and Maclean, JJ. Jan. 13, 1881.]

A CHARGE laid against certain persons before the police having been reported false by that body, the person who made the charge complained to the Magistrate of the District, who directed a fresh investigation. The charge was again reported false. The complainant thereupon filed a petition in which he alleged that the second investigation had not been properly conducted, and asked that further evidence might be taken by a specified officer. No further investigation having taken place, the complainant was ordered to be prosecuted under s. 211 of the Penal Code, and, on trial, was convicted and sentenced. On appeal to the High Court, it was *held* that the conviction was illegal, inasmuch as an opportunity had not been afforded to the accused of producing all his evidence in support of the charge made by him. *Per Maclean, J.*—The proper principle which should guide a Magistrate is that, if no complaint is made before him after a reasonable time has elapsed from the conclusion of a police-inquiry, he would be justified in proceeding against a person who has made a complaint to the police which has been found to be false; but if a complaint is made, that complaint must be dealt with judicially. It is unfair even then to proceed against the complainant without hearing any witnesses whom he may wish to examine. *Per Mitter, J.*—Although a Magistrate has power, under s. 147 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 203 of the new Code of Criminal Procedure

(Act X. of 1882), to dismiss a complaint without examining witnesses, yet in such a case no sanction for prosecution under s. 211 of the Penal Code should be granted.—In the Matter of Chuokrodhur Potti, 8 C. L. R. 289. [Mitter and Maclean, JJ. Jan. 20, 1881.]

WHERE a charge had been preferred against a person, and the Magistrate before whom it was heard; upon hearing the statement of the complainant, but not those of the witnesses, dismissed the complaint, and subsequently, on the application of the person charged, granted him leave under s. 470 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882) to prosecute the complainant for bringing a false charge, *held* that the proceedings were not irregular, and that the Magistrate was justified in acting as he had done. *Held* also that there is a distinction in the proceedings to be adopted when a sanction is given under s. 470 of Act of 1872 (or s. 195 of Act X. of 1882) and the institution by the Court of its own motion of proceedings under s. 471 of the Act of 1872 (or s. 195 of the Act of 1882).—In the matter of the Petition of Gyan Chunder Roy : Gyan Chunder Roy v. Protab Chunder Dass, I. L. R., 7 Cal. 208 ; 8 C. L. R. 267. [Cunningham and Prinsep, JJ. April 6, 1881.]

UPON a trial for bringing a false charge with intent to injure, it appeared that the original complaint was lodged in the Court of the Extra Assistant Commissioner, and a local inquiry by a competent police-officer was directed. The officer reported that the charge was false, and recommended that the prisoner should be prosecuted. The Extra Assistant Commissioner ordered the papers to be sent to the Deputy Commissioner, who ordered the prosecution ; and the prisoner was convicted. *Held* that the conviction was bad. The Extra Assistant Commissioner should, on receipt of the report of the police, have communicated its contents to the prisoner, and afforded her an opportunity of substantiating her complaint, and should then have decided the case.—In the Matter of the Petition of Sakhina Bibee ; Empress v. Grish Chunder Nundi, I. L. R., 7 Cal. 87 ; 8 C. L. R. 387. [Norris and Tottenham, JJ. April 26, 1881.]

A MAGISTRATE should not direct a prosecutor to be put upon his trial under s. 211 of the Penal Code without first giving him an opportunity of obtaining a judicial inquiry into the charge originally preferred by him. The sanction to prosecute, contemplated in s. 468 of the Criminal Procedure Code of 1872 (corresponding with s. 195 of the Code of 1882), is not a direction to prosecute, but is a permission granted to a private person to exercise his own unfettered discretion as to whether he will take proceedings or not.—In the Matter of the Petition of Gridhari Mondul : Gridhari Mondul v. Uchit Jha, I. L. R., 8 Cal. 435 ; 10 C. L. R. 46. [Pontifex and Field, JJ. Dec. 7, 1881.]

WHERE a Magistrate dismisses a complaint as a false one under s. 147 of the Criminal Procedure Code of 1872 (corresponding with s. 203 of the Code of 1882), and decides to proceed against the complainant under s. 471 of the Code of 1872 (corresponding with s. 476 of the Code of 1882) for making a false charge, he is not bound, before so proceeding, to give the complainant an opportunity of substantiating the truth of the complaint by being allowed to produce evidence before him.—Empress v. Bhowani Persad, I. L. R., 4 All. 182. [Oldfield, J. Dec. 24, 1881.]

K MADE a report at a police-station accusing R of a certain offence. The police having reported to the Magistrate having jurisdiction in the matter that in their opinion the offence was not established, the Magistrate ordered the case to be "shelved." K then preferred a complaint to the Magistrate, again accusing R of the offence. The Magistrate rejected the complaint with reference to the police-report. Subsequently R, with the sanction of the police-authorities, instituted criminal proceedings against K, under s. 182 of the Penal Code, in respect of the report which he had made at the police-station, and K was convicted under that section. *Held* that, before proceeding against K, the Magistrate should have fully investigated and sifted his complaint for himself, and should not have abrogated the functions imposed on him by law, because the police had reported against the entertainment of the case. The views expressed in the Government v. Karimdad (I. L. R., 6 Cal. 496) concurred in. *Held* also that K's conviction under s. 182 of the Penal Code was illegal, as the Magistrate had no power to entertain a complaint under that section at the instance of R, the application of s. 182 and the institution of prosecutions under it being limited to the public servant against whom the offence has been committed or to his official superior, as mentioned in s. 467 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882), and it not being intended that those provisions should be enforced at the instance of private persons. Moreover, if K's complaint was false, his offence was against R, and not against the public servant to whom the complaint was made, and fell within s. 211 of the Penal Code. Ordered that the complaint made by K should be investigated.—Empress v. Radha Kishan, I. L. R., 5 All. 36. [Straight, J. July 5, 1882.] Concurs

in *Government v. Karimdad*, I. L. R., 6 Cal. 496. Explains *Queen v. Hurree Ram*, 3 N. W. P. 194. Overrules *Empress v. Jugal Kishore*, I. L. R., 8 All. 382. Dissented from in *Poonit Singh v. Madho Bhot*, I. L. R., 13 Cal. 250.

J COMPLAINED to the police that she had been raped by a certain person. The police having reported the charge to be false, criminal proceedings were instituted against her under s. 182 of the Penal Code. In the meantime J made a complaint in Court, again charging R with rape. This complaint was not disposed of, but the proceedings against her under s. 182 of the Penal Code were continued, and she was eventually convicted under that section. *Held*, setting aside the conviction, and directing that J's complaint should be disposed of, that such complaint should have been disposed of before proceedings were taken against her under s. 182.—*Empress v. Jammi*, I. L. R., 5 All. 387. [Oldfield, J. Mar. 9, 1883.]

R MADE a complaint of theft against S to the police. The police referred the case as false to the Magistrate. The Magistrate summoned R, and examined him, but gave him no opportunity to prove the charge by calling the witnesses named by him. The Magistrate then ordered the case to be struck off the file, and gave sanction to prosecute R. It was subsequently brought before the same Magistrate and committed to the Sessions, and convicted by the Sessions Court under s. 211 of the Penal Code. *Held* that, although R had no opportunity of proving his case before he was himself tried, the conviction was not illegal.—*Rámásámi v. Queen-Empress*, I. L. R., 7 Mad. 292. [Kernan and Kindersley, JJ. Feb. 4, 1884.]

A COMPLAINT of offences under ss. 323 and 379 of the Penal Code was referred to the police for inquiry. The police reported that the charge was a false one, and thereupon the Magistrate of the District passed an order, under s. 195 of the Criminal Procedure Code, directing the prosecution of the complainants for making a false charge under s. 211 of the Penal Code. *Held* that the order under s. 195 of the Criminal Procedure Code should not have been passed until the complainants had been afforded an opportunity of proving their case, which had been thrown out merely on the report of the police. *Govt. v. Karimdad* (I. L. R., 6 Cal. 496 ; 7 C. L. R. 467) referred to.—*Queen-Empress v. Ganga Ram*, I. L. R., 8 All. 38. [Brodhurst, J. Dec. 2, 1885.]

#### SANCTION TO PROSECUTE.

WHERE the sanction to a prosecution accorded under s. 169, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), extended only to one of the persons charged, the High Court quashed the commitment, and directed the discharge of the persons to whom the sanction did not apply.—*Queen v. Woodurnul Singh and others*, 10 W. R. 24A. [Phear and Hobhouse, JJ. Aug. 4, 1868.]

A COLLECTOR, to whom an application is made for a new stamp under cl. 2, s. 50, Act X. of 1862, does not sit as a Court, Civil or Criminal, and the application, therefore, not being a document given in evidence in any proceeding of a Court, s. 170 of the Code of Criminal Procedure (Act XXV of 1861), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), does not apply to such a case.—*Queen v. Gour Mohun Sein and another*, 11 W. R. 48 ; 3 B. L. R. A. Cr. 6. [Norman and Jackson, JJ. May 5, 1869.]

IN a case against the accused under s. 211, Penal Code, the Joint-Magistrate, in the course of the trial, altered the charge from a private one under s. 211 to a public one under s. 182, and convicted the accused on the facts. There being no sanction to prosecute under s. 182, the Sessions Judge referred the case to the High Court. The High Court altered the conviction to one under s. 211, as the accused was not prejudiced in his trial.—*Kirti Ojha v. Rajkumar*, 7 B. L. R. 29n. ; 13 W. R. 67. [Loch and Hobhouse, JJ. April 30, 1870.]

SANCTION was given by the Magistrate for the institution of criminal proceedings against the defendant for having made a false charge against the complainant. The Magistrate dismissed the complaint on the ground that the complainant had taken no step to prosecute for three months after the sanction was obtained. *Held* that the Magistrate had power to dismiss the complaint.—*Pro.*, Jan. 9, 1871, 6 Mad. H. C. Rep. Ap. 15. No sanction shall remain in force for more than six months from the date on which it was given.—*Crim. Pro. Code* (Act X. of 1882), s. 195.

THE words "appellate judgment of acquittal" in s. 272 of Act X. of 1872 (corresponding with s. 417 of Act X. of 1882), were meant to include all judgments of an Appellate Court by which a conviction is set aside. A complaint made at a police-station is not made before any Civil or Criminal Court; and, if it proves false, prosecution for it does not require the sanction of any Court under s. 468, Code of Criminal Procedure (corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882)).—*Govern-ment of Bengal v. Gokool Chunder Chowdhry*, 24 W. R. 41. [Jackson and McDonell, JJ. Aug. 10, 1875.]

WHERE sanction has been given under s. 468 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882) by a Deputy Magistrate to a person to prosecute another for bringing a false charge, and such sanction is not proceeded under, it is open to the District Magistrate to take up the case under s. 142 of the Act of 1872 (corresponding with s. 191 of the Act of 1882) without complaint.—*Empress v. Nipcha*, I. L. R., 4 Cal. 712. [Jackson and Tottenham, JJ. Dec. 2, 1878.]

A CHARGE of theft was made before the police, and while inquiries, which afterwards resulted in the charge being found by the police not to be proved, were pending, the charge was repeated in a complaint before the Magistrate of the district, by whom the matter was handed over to the Sub-Deputy Magistrate, who reported the charge as false. Whereupon the Magistrate directed the police to enter the charge as false, but without ordering the formal dismissal of the petition of the complainant. On the application of the accused, a counter-prosecution under ss. 211, 182, and 500 of the Penal Code, was then sanctioned, and the case sent to the Deputy Magistrate for trial. That officer discharged the accused on the ground that the sanction of the Magistrate was illegal, as there had been, he alleged, (1) no judicial investigation as to the original charge, (2) no formal dismissal of the complaint, and (3) the witnesses produced by the complainant had not been all examined. *Held* that the Deputy Magistrate was bound to accept the sanction made by a superior Court as valid, and to leave the accused to question it before a competent Court, if so advised; that a prosecution may be maintained in respect of a false charge made to the police, or contained in a complaint which has been dismissed under s. 147 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 203 of the new Code of Criminal Procedure (Act X. of 1882), although there has been no judicial investigation; and that accordingly the Deputy Magistrate ought to have tried the charge before him.—*Nusibunnissa Bibee v. Sheik Erad Ali*, 4 C. L. R. 413. [Ainslie and Broughton, JJ. April 3, 1879.]

B CHARGED certain persons before a police-officer with theft. Such charge was brought by the police to the notice of the Magistrate having jurisdiction, who directed the police to investigate into the truth of such charge. Having ascertained that such charge was false, such Magistrate took proceedings against B on a charge of making a false charge of an offence, an offence punishable under s. 211 of the Penal Code, and convicted him of that offence. *Held* that as such false charge was not preferred by B before such Magistrate, the offence of making it was not a contempt of such Magistrate's authority, and the provisions of ss. 468 and 473 of Act X. of 1872 (corresponding with s. 195 of Act X. of 1882) were inapplicable, and such Magistrate was not precluded from trying B himself, nor was his sanction or that of some superior Court necessary for B's trial by another officer. *Empress v. Kashmiri Lall* (I. L. R., 1 All. 625) distinguished. Observations by Stuart, C.J., on the careless manner in which the charge in this case was framed.—*Empress v. Baldeo*, I. L. R., 3 All. 322. [Stuart, C.J., and Pearson, J. Nov. 16, 1880.]

A SANCTION for a prosecution for making a false charge under s. 211 of the Penal Code, without hearing all the witnesses whom the person accused of making the false charge wishes to produce, is illegal. The High Court has power to quash an illegal commitment at any stage of the case.—*Empress v. Shibo Behara*, I. L. R., 6 Cal. 594; 8 C. L. R. 265. [Mitter and Maclean, JJ. Jan. 20, 1881.]

THERE being nothing in the law requiring that sanction to prosecute under s. 211 of the Penal Code should only be granted upon application by a private prosecutor, a District Magistrate is competent under s. 468 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882), of his own motion, to direct a prosecution where a complaint has been entertained and found to be false by a Magistrate subordinate to him. There being no abatement of an offence after it has been committed, a person cannot be convicted of abetting the offence of instituting a false charge, on evidence which shows only that he gave evidence in support



of a charge found to be false. Duty of Judge in charging a jury discussed.—In the Matter of Jugut Mohini Dassi and another, Petitioners, 10 C. L. R. 4. [McDonnell and Tottenham, JJ. Dec. 13, 1881.]

It is competent for a Court which has granted sanction to prosecution under s. 195 of the Criminal Procedure Code to give a fresh sanction, if the one previously granted has expired by efflux of time. The limitation of six months mentioned in s. 195 means that a Magistrate shall not take cognizance of a case under a sanction which is more than six month old, not that the whole prosecution must be completed within that period. *Held*, therefore, where sanction to a prosecution had been granted under s. 195, and the prosecution had been instituted, and the Magistrate, in consequence of evidence of the complainant not being procurable, had ordered "the case to be shelved for the present," and the complainant, after the six months mentioned in s. 195 had expired, applied to the Magistrate to re-open the proceedings, that it was competent for the Magistrate, having once taken cognizance of the case, and it still remaining on his file undetermined, to take it up again at any moment, and proceed with the prosecution without fresh sanction.—In the Matter of the Petition of Gulab Singh v. Debi Prosad, I. L. R., 6 All. 45. [Straight, Offg. C.J. July 28, 1882.]

A MAGISTRATE of the first class, after considering the result of an investigation of a police-officer under s. 202 of the Code of Criminal Procedure, dismissed a complaint as false, and passed an order sanctioning the prosecution of the complainant for an offence punishable under s. 211 of the Penal Code, and directed a Third-class Magistrate to hold a preliminary inquiry, the offence being cognizable by the Court of Session only. *Held* that, as there was no application before the First-class Magistrate for sanction to prosecute, the order must be taken to be a complaint made by the said Magistrate, and therefore, under s. 476 of the Code of Criminal Procedure, the Third-class Magistrate had no jurisdiction to hold any inquiry. *Held* also that the First-class Magistrate ought to have held a preliminary inquiry under s. 476 in order that the complainant might have an opportunity of showing the truth or *bona fides* of the complaint.—Queen v. Chandramma, I. L. R., 7 Mad. 189. [Turner, C.J., and Muttusami Ayyar, J. Oct. 26, 1883.]

A PROSECUTION of a charge under s. 211 of the Penal Code should not be granted under s. 195 of the Criminal Procedure Code as a matter of course, but only when the complainant can satisfy the Court that the interests of justice require a prosecution, and there is a strong *prima-facie* case against the accused. *Held*, therefore, where S, who had been tried before the Court of Session for an offence, and acquitted, applied to the Court, in respect of the criminal proceedings which had been instituted against him, for sanction to prosecute G for abetment of an offence under s. 211 of the Penal Code, and the Sessions Judge granted the sanction, and there was nothing on the record of the criminal case or of the Judge's proceedings to show on what grounds G was accused of abetting a false charge, or on what grounds the Judge gave the sanction, that before the Judge gave the sanction, he should have satisfied himself, by examination of S or other inquiry, whether S had sufficient grounds, in fact, for accusing G, and whether there were good *prima-facie* grounds for suspecting G of abetting a false charge, and permitting a prosecution.—In the Matter of the Petition of Gauri Sahai, I. L. R., 6 All. 114. [Oldfield, J. Nov. 23, 1883.]

A DISTRICT Court has jurisdiction under s. 195 of the Code of Criminal Procedure (Act X. of 1882) to revoke or grant a sanction granted or refused by a Subordinate Judge's Court.—Venkata v. Muttusami, I. L. R., 7 Mad. 314. [Turner, C.J., and Brandt, J. Feb. 12, 1884.]

A SANCTION to prosecute, when applied for subsequently to the termination of the proceedings in course of which the offence is alleged to have been committed, ought not to be granted, unless the person against whom the sanction is applied for had had notice of the application and an opportunity of being heard.—Abbilakh Singh v. Khub Lal, I. L. R., 10 Cal. 1100. [Field and Norris, JJ. Aug. 19, 1884.] But see the following ruling:

No notice is necessary to the person against whom it is intended to proceed, before the Court before which the alleged offence has been committed can, under s. 195 of the Criminal Procedure Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section.—In the Matter of the Petition of Krishnanund Das; Krishnanund Das v. Hari Bera, I. L. R., 12. Cal. 58. [Pigot and O'Kinealy, JJ. Sep. 22, 1885.]

S. 195, Criminal Procedure Code (Act X. of 1882), runs as follows :

No Court shall take cognizance—

(a) of any offence punishable under ss. 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate ;

(b) of any offence punishable under ss. 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate ;

(c) of any offence described in s. 463, or punishable under ss. 471, 475, or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person ; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate ; and no such sanction shall remain in force for more than six months from the date on which it was given.

For the purposes of this section, every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

#### CHARGING ON SUSPICION.

NIHALA informed a police-sergeant that a burglary had been committed, and that he suspected Ramkishen. In consequence of this information, Ramkishen's premises were searched, and some property belonging to Nihala was found. Ramkishen was arrested, but upon investigation the Magistrate found that Nihala had himself placed the property where it was discovered. Ramkishen was accordingly discharged, and he then brought a charge against Nihala under s. 211, who was committed to the Deputy Commissioner for trial, but acquitted on the ground that he (Nihala) had never made any charge against Ramkishen, but had merely stated that he suspected him. On the revision side, the Chief Court held that the facts disclosed an offence under s. 211, and directed a new trial.—*Crown v. Nihala*, Panj. Rec., No. 14 of 1872.

WHERE a person who is interested in the matter, or has a certain official responsibility, says to a police-officer, "A tells me that X has committed a certain offence, and B and C confirm the statement, and I accordingly suspect X," and follows up that statement by an application to have X's house searched, he prefers a charge against X. If such charge be false, he may be convicted under s. 211 of the Penal Code.—*Queen v. Hunooman Lall*, 19 W. R. 5. [Jackson, J. Dec. 4, 1872.]

A STATEMENT made to the police of a suspicion that a particular person had committed an offence is not a "charge" within the meaning of s. 211 of the Penal Code, nor does it amount to the institution of a criminal proceeding, and the person making the statement cannot, on the suspicion being proved to be unfounded, be convicted under that section.—In the Matter of Bramanund Bhattacharjee, 8 C. L. R. 233. [Pontifex, Mitter, and Maclean, JJ. Mar. 10, 1881.]

THE principle of the following ruling, which was one delivered under s. 182 of the Penal Code, would also apply to s. 211 of the same Code: "S. 182 of the Penal Code must be read as an entire section, and, when so read, it applies to those cases in which the police are induced, upon information supplied to them, to do or omit to do something which might affect some third person, and which they would not have done had they

known the truth of the matter laid before them. The facts of the case appear in the following judgment, which is reproduced in full: 'Petheram, C.J.—We think that this rule must be made absolute to set aside the conviction. The facts of the case are that a person went on one occasion and informed the police that he had been robbed in the street of a shawl, but in the statement which he made to the police he did not indicate any particular person or describe any person in such a way as by any possibility could be supposed to implicate any one as the person who committed the robbery. All he said was that he was robbed by a person whom he did not see. So that in the statement that he made he did not say anything to cast suspicion on any one in particular. Under these circumstances, there was no offence within the meaning of s. 182 of the Penal Code. That section provides that any person who gives any information to a public servant with the intention of inducing him to put his powers in force to the injury or annoyance of any person, or to do or omit anything which such public servant would not have done or omitted to do if the true state of facts respecting which such information was given had been known to him, shall be punished in a certain way there specified. As it seems to us, that section must be read as a whole, and, taken as a whole, we think it applies to those cases in which the police are induced, upon the information supplied to them, to do or omit to do something which might affect some third person, and which they would not have done if they had known the true state of things. Upon the information which was given to these police-constables, all that they could be justified in doing was to examine the informant as to what had happened to him, and then make such inquiries as the result of that examination might render desirable, but they would have no right to interfere with any one or search any one's house, because there were no circumstances brought to their knowledge by the information which this man gave which entitled them to suppose that any particular individual was guilty of any offence. Under the circumstances the most that the statement of the accused amounts to is, that it was untrue, and was made for the purpose of hoaxing the police. No doubt, that is a very wrong thing for any man to do. In the first place it is wrong to tell lies, and in the second place it is extremely wrong to take up the time of Government servants by putting them to useless inquiries under circumstances of this kind; but I do not think myself that such conduct comes within the meaning of this section, or amounts to anything more than a hoax, for which no punishment is provided by the Code. Under these circumstances, we cannot make a crime when it is not made one by the Code, or provide a punishment for it. The rule will therefore be made absolute to set aside the conviction; the prisoner will be discharged.'—In the Matter of the Petition of Golam Ahmed Kasi, I. L. R., 14 Cal. 314. [Petheram, C.J., and Beverley, J. Feb. 19, 1887.]

#### PUNISHMENT FOR MAKING FALSE CHARGE.

A PRISONER convicted under the second clause of s. 211 of the Penal Code should be sentenced to imprisonment, with or without fine, and not to fine alone.—Reg. v. Rāmā bin Rabbāji, 1 Bom. H. C. R. 34. [Forbes and Warden, JJ. Aug. 5, 1863.]

DISCUSSION as to the punishment sufficient for women charged with bringing a false charge of dacoity.—Queen v. Nathoo Doss and others, 3 W. R. 12. [Campbell, Jackson, and Glover, JJ. May 15, 1865.]

THE offence of making a false charge and the offence of intentionally giving false evidence are not cognate offences, or parts of the same offence, but may be punished separately.—Queen v. Abdool Azeez, 7 W. R. 59. [Kemp and Glover, JJ. April 27, 1867.]

REMARKS on the comparatively light sentence passed without any reason in a case where a false charge of murder was preferred and persisted in.—Queen v. Peetumloll Puddhun, 7 W. R. 75. [Seton-Karr, J. May 28, 1867.]

WHERE no criminal proceeding is instituted on a false charge of an offence of the nature described in the latter part of s. 211 of the Penal Code, the person making such charge is punishable only under the first part of that section.—Empress v. Parahu, I. L. R., 5 All. 598. [Brodhurst, J. May 22, 1883.] Concur in Empress v. Pitām Rai, I. L. R., 5 All. 215.

WHERE the accused, who was a head-constable, was found guilty of making a false charge under s. 211, and of giving false evidence under s. 193 of the Penal Code, and the Sessions Judge passed sentences of three months' simple imprisonment for each offence, and, taking into consideration the accused's past conduct, directed that the sentences should run concurrently, *held* that the sentences were inadequate and illegal. Accordingly, the sentences were enhanced to three months' rigorous imprisonment for each offence; and as

the two offences were distinct, the High Court directed, under s. 35 of the Criminal Procedure Code (Act X. of 1882), one sentence to commence after the expiration of the other. *Queen v. Abdool Azceez* (7 W. R. 59) followed.—*Queen-Empress v. Pir Mahomed*, I. L. R., 10 Bom. 254. [Birdwood and Jardine, JJ. Dec. 10, 1885.]

<p><b>212.</b> Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine :</p> <p>and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;</p> <p>and, if the offence is punishable with imprisonment which may extend to one year and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.</p>	<p><i>Harbouring an offender—</i></p> <p><i>If a capital offence ;</i></p> <p><i>If punishable with transportation for life, or with imprisonment.</i></p>	<p><i>Of. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.</i></p> <p><i>Ditto.</i></p> <p><i>Presy. Mag., or Mag. of 1st class, or Court by which offence is triable. Cognizable. Warrant. Bailable. Not comp.</i></p>
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*Exception.*—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

*Illustration.*

A, knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

In this section the word “offence” has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code.

To support a conviction under s. 212, there must be evidence (a) of an offence committed which the accused could have intended to screen, and (b) of harbouring or concealing the offender. A *chaukidar* and a *patwari* concocting together, and letting a thief go, do not come under s. 212.—*Crown v. Kala Sing*, Panj. Rec., No. 21 of 1867.

S. 108 of the Penal Code does not contemplate any acts of subsequent abetment, or provide for the punishment of such offences, except when they are such as are defined in ss. 212 to 218.—*Queen v. Paun Pundah* and another, 18 W. R. 28 ; 9 B. L. R. Ap. 16. [Kemp and Glover, JJ. July 11, 1872.]

<p><b>213.</b> Whoever accepts, or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;</p> <p><i>Taking gift, &amp;c., to screen an offender from punishment—</i></p> <p><i>If a capital offence ;</i></p>	<p><i>Of. of Ses., Uncog. Warrant. Bailable. Not comp.</i></p>
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Jt. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

Presy. Mag.  
or Mag. of 1st  
class, or  
Court by  
which offence  
triable.

and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

A DEPUTY Magistrate vested with the powers of a Subordinate Magistrate of the Second Class is not competent to initiate a charge under s. 213.—Jhoomuck Chamar, 6 W. R. 90. [Kemp and Markby, JJ. Dec. 13, 1866.]

Ct. of Ses.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

**214.** Whoever gives or causes, or offers or agrees to give or cause, any

Offering gift or restoration of property in consideration of screening offender. gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence is punishable

If a capital offence. with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Ct. of Ses.,  
Presy. Mag.  
or Mag. of  
1st class.

and, if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

Presy. Mag.  
or Mag. of 1st  
class, or  
Court by  
which offence  
triable.

and, if the offence is punishable with imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.\*

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

A WARRANT-CASE, of a nature not compoundable under s. 214 of the Penal Code, was "dismissed" on the parties coming to an amicable settlement. *Held* that the "dismissal" was equivalent to a discharge under s. 215 of the Code of Criminal Procedure, and the composition did not affect the revival of the prosecution, if that should otherwise be thought necessary or expedient.—Reg. v. Devamá, I. L. R., 1 Bom. 64. [West and Nánábhái Haridás, JJ. Dec. 8, 1875.]

Presy. Mag.  
or Mag. of  
1st class.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

**215.** Whoever takes, or agrees or consents to take, any gratification

Taking gift to help to recover stolen property, &c. under pretence or on account of helping any person to recover any moveable property, of which he shall have been deprived by any offence punishable under this Code,

\* This exception has been substituted by Act VIII. of 1882, s. 6, for the one originally enacted ; and the illustrations have been repealed by Act X. of 1882.

shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**216.** Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes

Harbouring an offender who has escaped from custody, or whose apprehension has been ordered—

for an offence, whoever, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say,

If a capital offence ;

if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine ;

if the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine ;

If punishable with transportation for life, or with imprisonment.

and, if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

*Exception.*—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

In this section the word “ offence ” has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code.

**217.** Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture, or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Public servant disobeying a direction of law with intent to save person from punishment or property from forfeiture.

ishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture, or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

“ Offence ” in this section includes also any act or omission of which a person is alleged to have been guilty out of British India which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India ; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.\*

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

Ditto.

Presy. Mag. or Mag. of 1st class, or Court by which offence triable. Cognizable. Warrant. Bailable. Not comp.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

\* This paragraph has been inserted by Act X. of 1886, s. 23.

It is only necessary for a conviction under s. 217 of the Penal Code to show that the prisoner knew that the person he released was in danger of punishment, and that the prisoner released such person with the intention of saving him.—*Queen v. Abdoel Jaleel*, W. R. Sp. 5. [Jackson, J. Feb. 2, 1864.]

UNDER the latter portions of ss. 217 and 218, the actual guilt or innocence of the alleged offender is immaterial, if the prisoner believes they are guilty, and intends to screen them.—*Queen v. Hurdut Surma*, 8 W. R. 68; 3 Mad. Jur. 53. [Seton-Karr and Macpherson, JJ. Sep. 7, 1867.]

SEVERAL persons were apprehended at night-time on suspicion of having committed culpable homicide. The police-officer tied them together by the hands, and kept them in the village in which they had been arrested, instead of at once taking them to the nearest police-station. The prisoners escaped in the course of the night. To render s. 217 applicable, two conditions must be fulfilled: 1st, there must be an intentional disobedience of a rule of law; 2nd, there must be a knowledge that the offender, by disobedience, will save a person from legal punishment. If the police-officer's intention in keeping the prisoners in the village was merely to wait until it was more convenient to start, the disobedience of this rule of law was not such a disobedience as this section contemplates. In this case it was held that the police-officer had not committed an offence under s. 217—*Reg. v. Wootum Chund*, Panj. Rec., No. 18 of 1871.

WHERE a village-accountant and a village-munsif's peon had been convicted, under s. 217 of the Penal Code, of having disobeyed the direction of law contained in Act X. of 1872, s. 90 (corresponding with Act X. of 1882, s. 43), held that they were wrongfully convicted as not bearing the character which raises the obligation under the latter section. The direction of the law mentioned in s. 217, Penal Code, means a positive direction of law, such as those contained in ss. 89 and 90 of the Criminal Procedure Code of 1872 (corresponding with ss. 44 and 45 of Act X. of 1882), and cannot be made to extend to the more general obligation on every subject not to stifle a criminal charge.—*In re, Raminihi Nayar*, I. L. R., 1 Mad. 266. [Innes and Kernan, JJ. Mar. 7, 1877.]

THE accused was charged under s. 217 of the Penal Code; but the charge did not distinctly state what the direction of the law was which he disobeyed, and how he disobeyed it. Held that, when accused has been convicted on a charge expressed in vague terms, the prosecution on appeal should be limited to the particular sense in which the charge has been understood at the trial.—*Imperatrix v. Bábán Khán*, I. L. R., 2 Bom. 142. [West and Pinhey, JJ. Aug. 1, 1877.]

It is sufficient, for the purpose of a conviction under s. 217 of the Penal Code, that the accused has knowingly disobeyed any direction of the law as to the way in which he is to conduct himself as a public servant, and that he has done this with the intention of saving a person from legal punishment; it is not necessary to show that, in point of fact, the person so intended to be saved had committed an offence, or was justly liable to legal punishment.—*Empress v. Amiruddeen*, I. L. R., 3 Cal. 412; 1 C. L. R. 483. [Jackson and Cunningham, JJ. Feb. 12, 1878.]

**218.** Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture, or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

THE intention is an essential ingredient in the offence contemplated in s. 218.—*Queen v. Shama Churn Roy*, 8 W. R. 27. [Jackson and Hobhouse, JJ. June 25, 1867.]

WHERE a person is charged under s. 218 with framing a report incorrectly, or under s. 201 with giving false information with intent to save offenders from punishment, the issue to be tried is, not whether such alleged offenders were, in fact, guilty or not, but

Ct. of Ses.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture.

merely the belief and intention of the prisoner in respect to their guilt.—*Queen v. Hurdut Surma*, 8 W. R. 68. [Seton-Karr and Macpherson, JJ. Sep. 7, 1867.]

A KULKARNI who makes a false report with reference to an offence committed in his village with intent, &c., is punishable under s. 218 of the Penal Code.—*Reg. v. Malhar Rámchundra*, 7 Bom. H. C. R. 64. [Gibbs and Melvill, JJ. Aug. 11, 1870.]

A POLICE-OFFICER negligently or improperly submitting an incorrect report of a local investigation may be punished under s. 29, Act V. of 1861, in cases where the proof is insufficient to bring the case under s. 218, Penal Code.—Reference in the Case of *Boroda Kant Mookhopadhyay*, 15 W. R. 17. [Norman, Offg. C.J., and Loch, J. Feb. 11, 1871.]

S. 108 of the Penal Code does not contemplate any acts of subsequent abetment, or provide for the punishment of such offences, except when they are such as are defined in ss. 212 to 218.—*Queen v. Paun Pundah* and another, 18 W. R. 28; 9 B. L. R. Ap. 16. [Kemp and Glover, JJ. July 11, 1872.]

WHERE a chaukidar was charged under s. 218, Penal Code, with having made a false entry in a chaukidari attendance-book, with a view to support a charge which was made against a sub-inspector of having made a false report regarding the length of absence from duty of another chaukidar, and thereby to cause loss or injury to the sub-inspector, it was held that the intention was too remote to fall within s. 218.—*Queen v. Jungle Lall*, 19 W. R. 40. [Kemp and Pontifex, JJ. Mar. 1, 1873.]

S WAS charged with the preparation of a certain record, and was in the habit of preparing it from certain abstracts made and read to him by D. D made and read false abstracts, whereby an incorrect record was prepared. The Court was of opinion that D could not strictly be held to have committed the offence described in s. 218 of the Penal Code. He was guilty, however, of abetment of the offence described in that section, and not the less so that S had no guilty knowledge or intention in the matter.—*Queen v. Brij Mohun Lal*, 7 N. W. P. 134. [Pearson, J. Jan. 25, 1875.]

L WAS charged by S with offences under ss. 193 and 218, Penal Code, and also accused of acts amounting to offences punishable under s. 466 with seven years' imprisonment. The Magistrate directed his discharge, whereupon L applied to the Court of Session, and S was committed for trial charged under s. 218, and acquitted by the Court of Session. The Court of Session then, under Act X. of 1872, s. 472 (corresponding with Act X. of 1882, s. 477), charged L with offences punishable under ss. 193, 195, 211, and 211 and 109, Penal Code, and committed him for trial. Held that such commitment was not bad because it included the charge under s. 493, such an offence not being exclusively triable by a Court of Session.—*Empress v. Lachman Singh*, I. L. R., 2 All. 398. [Stuart, C.J., and Spankie, J. June 11, 1879.]

A PUBLIC servant, in charge as such of certain documents, having been required to produce them, and being unable to do so, fabricated and produced similar documents, with the intention of screening himself from punishment. Held that such fabricated documents not being records or writings with the preparation of which such public servant as such was charged, he could not legally be convicted under s. 218 of the Penal Code; nor, such documents not being forgeries, as they were not made with the intent specified in s. 463, could he be legally convicted under s. 471.—*Empress v. Mazhar Hussain*, I. L. R., 5 All. 553. [Stuart, C.J., and Straight, Oldfield, Brodhurst, and Tyrrell, JJ. Mar. 19, 1883.]

A POLICE-OFFICER, who had suppressed a document entrusted to him to forward to his superior officer, made a false entry in his official diary that the document had been so forwarded, intending that, if he were prosecuted under the Police Act for suppressing the document, such entry might be used as evidence in his behalf that he had so forwarded the document. Held that, inasmuch as to constitute the offence of fabricating false evidence, defined in s. 192 of the Penal Code, the evidence fabricated must be admissible evidence, and as, if such police-officer had been prosecuted under the Police Act, the entry in the diary would not have been admissible in his behalf, though, contrary to his intention, it might have been used against him, such police-officer was improperly convicted in respect of such entry, of fabricating false evidence punishable under s. 193 of the Penal Code. Held also that such police-officer's intention in making such entry being to screen himself from punishment, he was not punishable under s. 218 of the Code.—*Empress v. Gauri Shankar*, I. L. R., 6 All. 42. [Straight, J. July 24, 1883.]

A TREASURY-ACCOUNTANT was convicted of offences under ss. 218 and 465 of the Penal Code under the following circumstances: A sum of Rs. 500, which was in the treasury, and was payable to a particular person through a Civil Court, was drawn out and paid



away to other persons by means of forged cheques. After the withdrawal of the Rs. 500, but before such withdrawal had been discovered, the representative of the payee applied for payment. The prisoner then upon two occasions wrote reports to the effect that the Rs. 500 in question then stood at the payee's credit as a revenue-deposit, and that it was about to be transferred to the Civil Court. Upon the first of these reports, an order was signed by the treasury-officer for the transfer of the money to the Civil Court concerned, and to effect such transfer a cheque was prepared by the sale-muharrir, which, as originally drawn up, related to the sum of Rs. 500 already mentioned. The signature of the cheque by the treasury-officer was delayed for some time, and meanwhile the cheque was altered by the prisoner in such a manner as to make it relate to another deposit of Rs. 500 which had been made subsequently to the above, and to the credit of another person. The result of this was the transfer of the second payee's Rs. 500 to the Civil Court, as if it had been the first Rs. 500, and to the credit of the first payee's representative. The prisoner was convicted under s. 465 of the Penal Code in respect of the cheque, and under s. 218 in respect of the two reports above referred to. *Held*, with respect to the charge under s. 465, that the prisoner's immediate and more probable intention—which alone, and not his remoter and less probable intention, should be attributed to him—was not to cause wrongful loss to the second payee by delaying payment of the Rs. 500 due to her, though the act might have caused her loss, but to conceal the previous fraudulent withdrawal of the first payee's Rs. 500; that, under these circumstances, he could not be said to have acted "dishonestly" or "fraudulently" within the meaning of s. 24 or s. 25 of the Penal Code; and that, therefore, his guilt under s. 465 had not been made out, and the conviction under that section must be set aside. *Held* also that prisoner's intention in making the false reports was to stave off the discovery of the previous fraud and save himself or the actual perpetrator of that fraud from legal punishment, and that, having prepared the reports in a manner which he knew to be incorrect, he was rightly convicted under s. 218 of the Penal Code. *Held* further that as the prisoner, who was a public servant, made these reports, and assumed to make them in due course and as a part of his duty, and held them out as reports which were made by the proper officer, and as no question was put in the examination of the witnesses from the office which suggested that it was not his business to make such reports, it must be inferred that he made them because it was his business to do so, and as a public servant within the meaning of s. 218 of the Penal Code.—*Queen-Empress v. Gridhari Lal*, I. L. R., 8 All. 653. [Edge, C.J. Aug. 24, 1886.]

Ct. of Ses.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

**219.** Whoever, being a public servant, corruptly or maliciously makes or pronounces, in any stage of a judicial proceeding, any report, order, verdict, or decision, which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Ditto.

**220.** Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

PROOF of an unlawful commitment to confinement will not of itself warrant the legal inference of malice. Knowledge that such commitment is contrary to law is a question of fact and not of law, and must be proved in order to satisfy the requirements of s. 220 of the Penal Code.—*Reg. v. Nārāyan Bābāji and others*, 9 Bom. H. C. R. 346. [Lloyd and Kemball, JJ. Aug. 28, 1872.]

S. 54 of the Criminal Procedure Code (Act X. of 1882) authorizes the arrest by the police, not only of persons against whom a reasonable complaint has been made or a reasonable suspicion exists of their having been concerned in a "cognizable offence," but also of persons against whom "credible information" to that effect has been received. *Semble*.—Where the arrest is legal, there can be no guilty knowledge "superadded to an illegal act," such as it is necessary to establish against the accused to justify a conviction under s. 220

of the Penal Code. It is only where there has been an excess, by a police-officer, of his legal powers of arrest, that it becomes necessary to consider whether he has acted corruptly or maliciously, and with the knowledge that he was acting contrary to law.—*Queen-Empress v. Amarsang Jetha*, I. L. R., 10 Bom. 506. [Birdwood and Jardine, JJ. Dec. 7, 1885.]

**221.** Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with, or liable to be apprehended for, an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape, from such confinement, shall be punished as follows, that is to say :—

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with death ; or

With imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years ; or

With imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement, or who ought to have been apprehended, was charged with, or liable to be apprehended for, an offence punishable with imprisonment for a term of less than ten years.

In this section the word “offence” denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

An offence falling under the Police Act and also under the Penal Code should be punished under the Code. Where a police-constable allowed a prisoner to escape from the *hauilat* while the former was on duty as sentry, and was sentenced, on conviction by the Magistrate, to forfeit three months’ pay under s. 29, Act V. of 1861, the Chief Court held that the conviction must be quashed, and the accused tried under s. 221.—*Crown v. Futeh Khan*, Panj. Rec., No. 11 of 1874.

A CHAUKIDAR or village-watchman is not legally bound as a public servant to apprehend a person accused of committing murder outside the village of which he is chaukidar, such person not being a proclaimed offender, and not having been found by him in the act of committing such murder ; and consequently such chaukidar, if he refuses to apprehend such person on such charge at the instance of a private person, is not punishable under s. 221 of the Penal Code.—*Empress v. Kallu*, I. L. R., 3 All. 60. [Pearson, J. June 25, 1886.]

**222.** Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence, “or lawfully committed to custody,” § intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape, from such confinement, shall be punished as follows, that is to say :—

With transportation for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death ; or

§ The words quoted have been inserted by Act XXVII. of 1870, s. 8.

Ct. of Ses.  
Uncog.  
Warrant.  
Not bailable.  
Not comp.

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards; or

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

With imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, "or if the person was lawfully committed to custody." \*

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

WHILE a case was being investigated by A, a police-officer, under the provisions of ch. 14 of the Criminal Procedure Code, 1882, T presented a petition to the Magistrate having jurisdiction to try the case, in which he accused W of being concerned in the commission of the offence, and prayed that he might be arrested and sent to the police-officer investigating the case. W was accordingly arrested and brought before the Magistrate, who, having examined T on oath, and taken W's statement, made an order on the petition to the following effect: "As no police-report has been made in this matter, and the petitioner only has presented this petition, ordered that these papers of W be sent to the District Superintendent of Police, and if a report of this matter be made, the case may be sent up according to rule with the papers." In accordance with this order, W was taken to the District Superintendent of Police, and was sent by that officer to A. Held that the Magistrate's order might be taken to have been passed under s. 167 of the Code, and therefore W was lawfully committed to the custody of the police, and A was bound to detain him in such custody until released therefrom by due course of law; and that, consequently, A, having negligently suffered W to escape, had been properly convicted under s. 223 of the Penal Code.—*Empress v. Ashraf Ali*, I. L. R., 6 All. 129. [Straight, J. Dec. 13, 1883.]

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Summons.  
Bailable.  
Not comp.

**223.** Whoever, being a public servant, legally bound as such public servant to keep in confinement any person charged with or convicted of any offence, "or lawfully committed to custody,\* negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

CONVICT-WARDERS are "public servants" within the meaning of s. 223 of the Penal Code.—*Queen v. Kalla Chand Moitree*, 7 W. R. 63; 3 Wym. 35. [Seton-Karr and Macpherson, JJ. May 6, 1867.]

S. 223 of the Penal Code applies only to cases where the person who is allowed to escape is in custody for an offence, or has been committed to custody, and not to cases where such person has merely been arrested under civil process.—*Queen-Empress v. Tafaulah*, I. L. R., 12 Cal. 190. [Wilson and Ghose, JJ. Aug. 24, 1885.]

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

**224.** Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged, or of which he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

\* The words quoted have been added by Act XXVII. of 1870, s. 8.

*Explanation.*—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

ESCAPING from lawful custody is not obstructing a public servant in the discharge of his public functions within the meaning of s. 185 of the Penal Code.—Reg. v. Poshu bin Dhambhiji Patil, 2 Bom. H. C. R. 128. [Couch, C.J., and Newton and Warden, JJ. Jan. 25, 1865.]

ESCAPES by parties detained for offences not punishable under the Penal Code are punishable under the Penal Code.—Pro., Dec. 22, 1865, 3 Mad. H. C. R. Ap. 11. [Bittleston, Offg. C.J., and Holloway, Collett, Ellis, and Innes, JJ.]

THE punishment for escape from lawful custody (s. 221), in a case in which that is one of the offences of which the prisoner is convicted, must be "in addition" to any punishment awarded for the substantive offence.—Queen v. Dhoonda Bhooya, 8 W. R. 85; 5 Wym. 7. [Kemp and Glover, JJ. Dec. 2, 1867.]

To constitute the offence of escaping from transportation under s. 226 of the Penal Code, it is essential that the convict should have been actually sent to a penal settlement, and have returned before his term of transportation had expired or been remitted. Where a prisoner had escaped from custody whilst on his way to undergo sentence of transportation, *held* that he had committed an offence punishable under s. 221, and not under s. 226 of the Penal Code.—Reg. v. Ramasamy, 4 Mad. H. C. R. 152. [Scotland, C.J., and Collett, J. Dec. 2, 1868.]

To escape from custody under civil process is not a criminal offence within the meaning of s. 8 of the Presidency Towns' Police Amendment Act of 1860. *Quare.*—Whether such an escape without force is a misdemeanour at Common Law.—*In re* David Turnbull Stuart; Reg. v. John Connon, 6 Bom. H. C. R. 15. [Westropp and Sargent, JJ. April 12, 1869.]

PRISONER, whilst under trial before the Sessions Court upon a charge framed under s. 436 of the Penal Code (mischief by fire, &c., with intent to destroy a house), was charged under s. 221 with escaping from lawful custody. The Magistrate, being too late to make the latter offence the subject of another charge in the same case, made a separate commitment of the prisoner, after he had been convicted of the former offence, for the latter offence, which was one cognizable by the Magistrate. The commitment was cancelled, and the Magistrate directed to deal with the case himself.—*In re* Anunto Koyburt, 17 W. R. 14. [Kemp and Jackson, JJ. Feb. 10, 1872.]

A PERSON who is detained in custody for the purpose of giving security for good behaviour, and escapes from the custody, has not committed an offence under s. 221, as he was not lawfully detained in custody for an offence.—Pro., Oct. 28, 1874, 7 Mad. H. C. R. Ap. 41. He is liable to be punished under s. 225A.

WHEN a party was sentenced to ten months' imprisonment for escaping from a confinement, which he was undergoing without warrant of law, and without having committed an offence, the High Court, in the exercise of its powers of interference, set aside the sentence.—Queen v. Rughobur Singh and another, 25 W. R. 1. [Jackson and McDonell, JJ. Dec. 2, 1875.]

ESCAPE from the custody of a village-watchman by a person wanted by the police on a charge of theft and arrested on suspicion by the village-watchman, is no offence under s. 221.—Reg. v. Boffigan (I. L. R., 5 Mad. 22), following Reg. v. M. Sinnadu Padiyachi (Weir, p. 68), in which the facts were as follow: "A prisoner, caught stealing limes, was brought by the owner to the Village-Magistrate, who put him into the stocks, and put the taluári and vattiyán in charge over him. They went to sleep, and the prisoner released himself. *Held* that the confinement in the stocks of the accused before conviction was not lawful custody (Mad. Reg. XI. of 1816), and that the village-watchman was not a police-officer within the meaning of Act XXIV. of 1859, because he had not been enrolled or invested with power under s. 11 of that Act. Conviction for escaping from lawful custody. Sep. 23, 1878."

AN escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour is not punishable under either s. 224 or s. 225 of the Penal Code.—*Empress v. Shasti Churn Napit*, 1 L. R., 8 Cal. 331; 10 C. L. R. 290. [Mitter and Maclean, JJ. Feb. 22, 1882.]

AN order was issued to a police-officer, directing him to arrest K under s. 55 of the Criminal Procedure Code, as a person of bad livelihood. K, with the assistance of three others, resisted apprehension, and escaped. *Held* that K was not charged with an "offence" within the meaning of that term as defined in s. 40 of the Penal Code, and that, consequently, no offence made punishable by s. 224 or s. 225 of the Penal Code had been committed in connection with his evasion of arrest.—*Empress v. Shasti Churn Napit* (1 L. R., 8 Cal. 331) followed.—*Queen-Empress v. Kandhaia*, 1 L. R., 7 All. 67. [Mahmood and Duthoit, JJ. Aug. 7, 1884.]

**225.** Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both ;

Or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with, or liable to be apprehended for, an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

IN this section the word "offence" denotes a thing punishable under this Code or under any special or local law as defined in this Code.—S. 40, Penal Code.

WHERE substantially but one offence has been committed, and the acts, which are the basis of one charge, are the same which form the basis of another charge on which the prisoner has also been convicted, cumulative sentences on each charge should not be passed. Where prisoners were convicted under s. 224 for escape, under s. 225 for rescuing from lawful custody, and under s. 353 for using criminal force in so doing, and sentenced to separate punishments under each section, it was held that the prisoners had only done one act, and were guilty of only one offence, and should only have been found guilty under ss. 224 and 225 of "escape" and "rescuing" respectively, and sentenced accordingly.—*Queen v. Kalisankar Sandyal and others*, 3 B. L. R. A. Cr. 14; 12 W. R. 2. [Macpherson and Jackson, JJ. June 11, 1869.]

WHERE a police-officer duly appointed under Act V. of 1861 was engaged in the discharge of his duty as such police-officer at a time when an unlawful assembly took place, it was held that he was competent to apprehend any of the members of such unlawful assembly ; and a person who rescued the party apprehended was convicted of rescuing from

lawful custody within the meaning of s. 225 of the Penal Code.—Queen v. Assam Shurreff, 13 W. R. 75. [Phear and Mitter, JJ. May 17, 1870.]

BEFORE a conviction can be had under s. 225, Penal Code, it must be proved that the person whom the accused are charged with having rescued was in lawful custody at the time.—Queen v. Degumber Aheer and another, 21 W. R. 22. [Glover and Markby, JJ. Dec. 18, 1873.]

WHERE a person, apprehended on a charge of a cognizable offence, escapes from lawful custody, his liability to punishment is not affected by the circumstance that a competent Court determines his offence to be other than that with which he has been charged. But if charged with a non-cognizable offence, the police-officer who apprehends him without warrant does not have him in lawful custody, and his escape is not punishable under the Penal Code, s. 224.—Queen v. Ram Saran Tewary, 24 W. R. 45. [Jackson and McDonell, JJ. Aug. 19, 1875.]

AN escape from custody when being taken before a Magistrate for the purpose of being bound over to be of good behaviour is not punishable under either s. 224 or s. 225 of the Penal Code.—Empress v. Shasti Churn Napit, I. L. R., 8 Cal. 331; 10 C. L. R. 290. [Mitter and Maclean, JJ. Feb. 22, 1882.] But see s. 225A, which is a new section.

AN order was issued to a police-officer, directing him to arrest K under s. 55 of the Criminal Procedure Code, as a person of bad livelihood. K, with the assistance of three others, resisted apprehension, and escaped. Held that K was not charged with an "offence" within the meaning of that term as defined in s. 40 of the Penal Code, and that consequently no offence made punishable by s. 224 or s. 225 of the Penal Code had been committed in connection with his evasion of arrest.—Empress v. Shasti Churn Napit (I. L. R., 8 Cal. 331) followed.—Queen-Empress v. Kandhaia, I. L. R., 7 All. 67. [Mahmood and Duthoit, JJ. Aug. 7, 1884.]

**225A.\*** Whoever, being a public servant legally bound as such public servant to apprehend, or to keep in confinement, any person in any case not provided for in section 221, section 222, or section 223, or in any other law for the time being in force, omits to apprehend that person, or suffers him to escape from confinement, shall be punished—  
 (a) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and  
 (b) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

**225B.\*** (1) Whoever, in any case not provided for in section 224 or section 225, or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

(2) Section 651 of the Code of Civil Procedure is hereby repealed.

**226.** Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also

As to cl. a,  
Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

As to cl. b,  
Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Summons.  
Bailable.  
Not comp.

As to s. 225B,  
Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

Ct. of Ses.  
Cognizable.  
Warrant  
Not bailable.  
Not comp.

\* Sections 225A and 225B have been substituted by Act X. of 1886, s. 24, for s. 225A as inserted in the Penal Code by Act XXVII. of 1870.

be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

To constitute the offence of escaping from transportation under s. 226 of the Penal Code, it is essential that the convict should have been actually sent to a penal settlement, and have returned before his term of transportation had expired or been remitted. Where a prisoner had escaped from custody whilst on his way to undergo sentence of transportation, it was held that he had committed an offence punishable under s. 224, and not under s. 226 of the Penal Code.—*Reg. v. Ramasamy*, 4 Mad. H. C. R. 152. [Scotland, C.J., and Collett, J. Dec. 2, 1868.]

Court by which original offence was triable. Uncog. Summons. Not bailable. Not comp.

**227.** Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was originally sentenced if he has already suffered no part of that punishment, and if he has suffered any part of that punishment, then with so much of that punishment as he has not already suffered.

A PERSON, convicted by the Recorder's Court of Prince of Wales's Island, Singapore, and Malacca, of the crime of burglary, and sentenced to transportation for ten years, at a place to be appointed by the Governor-General of India in Council, was released from the Ratnagiri Jail on the ticket-of-leave after having been in confinement for more than eight years. At Karedar he committed theft in a dwelling-house before his sentence had expired. Held that the F. P. Magistrate at Karedar had jurisdiction to try the convict for an offence of violation of the condition of remission of punishment under s. 227, Penal Code.—*Reg. v. Ahone Akong*, 9 Bom. H. C. R. 356. [Lloyd and Kemball, JJ. Sep. 5, 1872.]

Court in which offence committed, subject to provisions of ch. 35. Uncog. Summons Bailable. Not comp.

**228.** Whoever intentionally offers any insult or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

A PARTY who bids for an estate at a sale in execution with the knowledge that he is not in a position to deposit the earnest-money obstructs the business of the Court, and is guilty of contempt of Court, punishable under s. 228.—*Mohesh Chunder Mookerjee* (purchaser at an auction-sale), Appellant, W. R. Sp., Mis., 3. [Kemp and Campbell, JJ. Jan. 11, 1864.]

WHEN a person is in custody for contempt of Court, any application for release should be made to the committing Judge. It is advisable, but not necessary, to limit the period of commitment to a fixed time.—In the Matter of Sittaram Atmaram, 1 Ind. Jur. N. S. 23. [Peacock, C.J., and Couch, J. Jan. 1866.]

REFUSING or neglecting to return direct answers to questions does not constitute the offence, under s. 228 of the Penal Code, of intentionally offering insult or causing interruption to a public servant sitting in a judicial proceeding.—*Reg. v. Pandu bin Vithoji*, 4 Bom. H. C. R. 7. [Couch, C.J., and Newton, J. July 24, 1867.]

PREVARICATION while giving evidence does not constitute the offence, under s. 228 of the Penal Code, of intentionally causing interruption to a public servant sitting in a judicial proceeding.—*Reg. v. Auba bin Bhivray*, 4 Bom. H. C. R. 6. [Couch, C.J., and Newton, J. July 24, 1867.]

PERSISTING in putting irrelevant and vexatious questions to a witness after warning might amount to a contempt.—*Azeemoola v. Crown*, Panj. Rec., No. 44 of 1867.

AN appeal lies against an order of the Sessions Court imposing a fine upon a witness under s. 223 of the Penal Code for intentional insult to the Sessions Judge sitting in a stage of a judicial proceeding. Where the High Court were satisfied that the witness did not intend to insult the Judge, the order was set aside.—*Reg. v. R. Chappu Menon*, 4 Mad. H. C. R., 146. [Scotland, C.J., and Ellis, J. Nov. 6, 1868.]

IN a conviction under s. 228 of the Penal Code, it ought to be clearly stated that the Judge was sitting in a stage of a judicial proceeding, the nature of which should also be stated.—*Prokash Chunder Doss*, Petitioner, 12 W. R. 64. [Norman and Kemp, JJ. Oct. 1, 1869.]

**HELD**, overruling *Baijoo Baul v. Gungun Misser and others* (8 W. R. 61), that a Magistrate cannot take cognizance of an offence under s. 174, Penal Code, committed against his own Court, but is bound, under s. 171 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 476 of the new Code of Criminal Procedure (Act X. of 1882), to send the case for trial before another Magistrate. The only cases under the Criminal Procedure Code in which a Sessions Judge or Magistrate can try a case in which he is himself interested pointed out.—*Queen v. Chunder Shekur Roy*, 13 W. R. 66; 5 B. L. R. 100. [Jackson and Glover, JJ. April 23, 1870.]

No conviction can be had under s. 228 of the Penal Code, simply because witnesses in a case give inconsistent evidence, and give their evidence reluctantly, and take up the time of the Court.—*Queen v. Chota Hurry Pramanick Tantee and another*, 15 W. R. 5. [Norman, Offg. C.J., and Loch, J. Jan. 21, 1871.]

**BEFORE** a conviction can be had under s. 228 of the Penal Code of offering an insult to a public servant, it must be proved that there was an *intention* to insult.—*Queen v. Hurri Kishen Doss*, 15 W. R. 62. [Kemp and Glover, JJ. April 29, 1871.]

**PREVARICATION** by a witness may, though it does not necessarily, amount to contempt of Court within the meaning of s. 228 of the Penal Code, and s. 435 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 480 of the new Code of Criminal Procedure (Act X. of 1882).—*Reg. v. Jaimal Shravan*, 10 Bom. H. C. R. 69. [Melvill and Kembal, JJ. Mar. 27, 1873.]

A SUB-REGISTRAR is a public officer; his proceedings are judicial proceedings within the meaning of s. 228 of the Penal Code; and his Court is a Court within the meaning of that word in the Evidence Act. In cases under s. 228 of the Penal Code, the Court in which the offence is committed is to try the offence, but the procedure is to be restricted by the provisions of ch. 32 of the Code (Act X. of 1872), corresponding with ch. 35 of the new Code (Act X. of 1882). Where, in a case under s. 228, the sub-registrar, before whom the offence was committed, did not proceed under s. 435 or s. 436 of the Code of 1872 (corresponding with ss. 480 to 482 of the new Code (Act X. of 1882)), it was held that a Magistrate had no jurisdiction.—*Sardharee Lal*, Petitioner, 22 W. R. 10; 13 B. L. R. Ap. 40. [Kemp and Birch, JJ. April 28, 1874.]

S. 473 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 487 of the new Code of Criminal Procedure (Act X. of 1882), which, except as therein provided, forbids a Court to try any person for an offence committed in contempt of its own authority, is not limited to offences falling under ch. 10 of the Penal Code, but extends to all contempts of Court. *Reg. v. Kultaram Singh* (I. L. R., 1 All. 129) dissented from. 7 Mad. H. C. R. Ap. 17 approved. *Reg. v. Navranbeg Dulabeg* (10 Bom. H. C. R. 78) followed.—*Reg. v. Parsápa Mahadevápá*, I. L. R., 1 Bom. 339. [Melvill and Nánábhái Haridás, JJ. Aug. 17, 1876.]

A BARRISTER, offended by the use of a strong expression on the part of a Judge while sitting in Court, sends an officer to the Judge's private residence upon a pacific errand to ask for an explanation. *Held*, by nine Judges out of eleven, that the party sending the message and the party conveying it are guilty of contempt of Court.—In the Matter of Piffard (C.) and Francis (E. G.), Hyde's Rep. 79.

**229.** Whoever, by personation or otherwise, shall intentionally cause  
 Personation of a juror or or knowingly suffer himself to be returned, em- Presy. Mag.  
 assessor. or Mag. of  
 1st class.  
 panelled, or sworn as a jurymen or assessor in any Uncog.  
 case in which he knows that he is not entitled by law to be so returned, Summons.  
 empanelled, or sworn, or knowing himself to have been so returned, empa- Bailable.  
 nelled, or sworn contrary to law, shall voluntarily serve on such jury or as Not comp.  
 such assessor, shall be punished with imprisonment of either description for  
 for a term which may extend to two years, or with fine, or with both.



## CHAPTER XII.

## OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

## REPORT OF THE INDIAN LAW COMMISSIONERS ON OFFENCES RELATING TO COIN.

MOST of the provisions in this chapter appear sufficiently intelligible, without any explanation.

We have proposed that the Government of India should follow the general practice of Governments in punishing more severely the counterfeiting of its own coin, than the counterfeiting of foreign coin. It appears to us peculiarly advisable, under the present circumstances of India, to make this distinction. It is much to be wished that the Company's currency may supersede the numerous coinages which are issued from a crowd of mints in the dominions of the petty Princes of India. It has appeared to us that this object may be in some degree promoted by the law as we have framed it. That coinage, the purity of which is guarded by the most rigorous penalties, is likely to be the most pure; and that coinage which is likely to be the most pure will be the most readily taken in the course of business.

It is not very probable that any person in this country will employ himself in making counterfeit sovereigns or shillings: but should so improbable an event occur, we think that the King's coin should have the same protection which is given to the coin of the local Government. It may perhaps be thought that in proposing laws for the protection of the King's coin, we have departed from the principle which we laid down in our note on the law of offences against the State, and that we should have acted more consistently in leaving the British currency to the care of the British legislature. It appears to us, however, that the offence of coining, though, in an arbitrary classification, it may be called by the technical name of treason, is, in substance, an offence against property and trade, and that it is an offence of very nearly the same kind with the forging of a bank-note, and that it would be an offence of exactly the same kind if the bank-note, like the notes of the Bank of England formerly, were in all cases legal tender, or if the coin, like the Company's gold-mohur at present, were not legal tender. We do not therefore conceive that, in proposing a law for punishing the counterfeiting of the King's coin, we are proposing a law which can reasonably be said to affect any of the royal prerogatives.

The distinction which we propose to make between two different classes of utterers is marked in the French Code; and it is so obviously agreeable to reason and justice that we are surprised that, having been marked in that Code, it should not have been adopted

by Mr. Livingston. We are glad to perceive that the Code of Bombay makes this distinction.

An utterer by profession, an utterer who is the agent employed by the coiner to bring counterfeit coin into circulation, is guilty of a very high offence. Such an utterer stands to the coiner in a relation not very different from that in which a habitual receiver of stolen goods stands to a thief. He makes coining a far less perilous, and a far more lucrative, pursuit, than it would otherwise be. He passes his life in the systematic violation of the law, and in the systematic practice of fraud in one of its most pernicious forms. He is one of the most mischievous, and is likely to be one of the most depraved, of criminals. But a casual utterer, an utterer who is not an agent for bringing counterfeit coin into circulation, but who, having heedlessly received a bad rupee in the course of his business, takes advantage of the heedlessness of the next person with whom he deals to pay that bad rupee away, is an offender of a very different class. He is undoubtedly guilty of a dishonest act, but of one of the most venial of dishonest acts. It is an act which proceeds not from greediness for unlawful gain, but from a wish to avoid, by unlawful means it is true, what to a poor man may be a severe loss. It is an act which has no tendency to facilitate or encourage the operations of the coiner. It is an occasional act, an act which does not imply that the person who commits it is a person of lawless habits. We think, therefore, that the offence of a casual utterer is perhaps the least heinous of all the offences into which fraud enters.

We considered whether it would be advisable to make it an offence in a person to have in his possession at one time a certain number of counterfeit coins without being able to explain satisfactorily how he came by them. It did not, after much discussion, appear to us advisable to recommend this or any similar provision. We entertain strong objections to the practice of making circumstances which are in truth only evidence of an offence part of the definition of an offence; nor do we see any reason for departing in this case from our general rule.

Whether a person who is possessed of bad money knows the money to be bad, and whether, knowing it to be bad, he intends to put it in circulation, are questions to be decided by the tribunals according to the circumstances of the case, circumstances of

REPORT OF THE INDIAN LAW COMMISSIONERS ON OFFENCES RELATING TO COIN—*contd.*

which the mere number of the pieces is only one, and may be one of the least important. A few bad rupees which should evidently be fresh from the stamp would be stronger evidence than a greater number of bad rupees, which appeared to have been in circulation for years. A few bad rupees, all obviously coined with the same die, would be stronger evidence than a greater number obviously coined with different dies. A few bad rupees placed by themselves, and unmixed with good ones, would be far stronger evidence than a much larger number which might be detected in a larger mass of treasure.

**230.** Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.\*

Coin stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, is the Queen's coin.

*Illustrations.*

- (a) Cowries are not coin.
- (b) Lumps of unstamped copper, though used as money, are not coin.
- (c) Medals are not coin, inasmuch as they are not intended to be used as money.
- (d) The coin denominated as the Company's rupee is the Queen's coin.

It is not necessary, in order to satisfy the ordinary definition of money, that a coin should be a legal tender receivable at a value in rupees fixed by law. Goldmohurs, which, although they do not pass at an absolutely fixed value, yet have a current value, not ascertainable merely by weighing them as lumps of gold, but attaching to them as coin, are coins "for the time being used as money" within the meaning of Act XIX. of 1872.—*Queen v. Kunj Beharee*, 6 N. W. P. 187. [Pearson and Jardine, JJ. June 7, 1873.]

S. 230 is an amended section. It has been amended by Act XIX. of 1872. The following are Mr. Hobhouse's object and reasons for the amendment: "The primary object of this Bill is to check the practice of counterfeiting the copper coin of Native States. These counterfeits are freely circulated in parts of British India, and the result is stated to be injurious to our currency. The Penal Code prohibits the counterfeiting of coin. But 'coin' is defined as 'metal stamped and issued by the authority of some Government,' and 'Government,' by s. 17, denotes 'the person or persons authorized by law to administer executive government in any part of British India.' It has thus happened (accidentally no doubt) that the coin of Native States is not coin within the meaning of the Act. This defect it is desired to amend. The opportunity has been taken to make another amendment. S. 230 defines coin as metal 'used' as money. It has been suggested that the definition may possibly be held to include old coin, such as Græco-Bactrian stater, formerly used as money, but now regarded only as a curiosity. The Bill therefore proposes to introduce before 'used' the words 'for the time being.'"

**231.** Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

*Explanation.*—A person commits this offence, who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

THOUGH there may be an absence of apparent resemblance, which may possibly arise from the process being imperfectly carried out, yet there would still be an offence under s. 231. And even if the metal in which the counterfeit was made was completely differ-

\* This paragraph has been substituted by Act XIX. of 1872 for the one originally enacted.

ent from that of the coin represented, it would still be a question of fact whether this difference did not arise merely from the manufacture having been interrupted in an early stage.—*Mad. H. C. Rul.*, Nov. 17, 1868.

WHERE a medal was fraudulently represented to an ignorant person as being money, it was held that the representation did not render the medal counterfeit coin.—*Mad. H. C. Rul.* 1864.

MERCHANTS in various parts of the country had been in the habit for many years of sending copper to the Nawab of Loharoo, who turned the metal in mints established for the purpose, into small round pieces, upon which a certain stamp was impressed, the stamp not purporting to resemble the mark on any legal coin. These pieces of copper were then sold in the bazars in British India by weight, and used as money. It was generally believed that the Nawab had authority to establish the mints and issue this copper as coin. Held that the pieces of copper were not counterfeit coin.—*Premsookh Dass v. Crown*, *Panj. Rec.*, No. 38 of 1870. But see the amended definition of "coin."

THE test of whether a coin is money or not is the possibility of taking it into the market and obtaining goods of any kind in exchange for it. For this its value must be ascertained and notorious. Held, therefore, that to counterfeit a coin of the Emperor Akbar's time was not an offence under ss. 230 and 231 of the Penal Code.—*Reg. v. Bāpu-yādav and Rāma Tulsiram*, 11 *Bom. H. C. R.* 172. [*West and Nānābhāi Haridās, JJ.* *Sep.* 10, 1874.]

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**232.** Whoever counterfeits, or knowingly performs any part of the Counterfeiting the Queen's process of counterfeiting, the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

To constitute the offence described in s. 232, there must be an intention that the coins made will be used as Queen's coin, or a knowledge that they are likely to be used as such. Such knowledge or intention will be inferred from the mere fact of counterfeiting, except under circumstances which conclusively negative it; but a distinction must be drawn between a deception practised for show merely, and one practised for wrongful loss or gain, and the former is not an offence under the Penal Code.—*Shumsodeen v. Crown*, *Panj. Rec.*, No. 26 of 1868.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**233.** Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**234.** Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of, any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**235.** Whoever is in possession of any instrument or material for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to

fine; and, if the coin to be counterfeited is the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

It is not necessary, to satisfy the ordinary definition of money, that a coin should be a legal tender receivable at a value in rupees fixed by law. Gold mohurs which, although they do not pass at an absolutely fixed value, yet have a current value, not ascertainable merely by weighing them as lumps of gold, but attaching to them as coin, are coins "for the time being used as money" within the meaning of Act XIX, of 1872.—*Queen v. Kunj Beharee*, 5 N. W. P. 187. [Pearson and Jardine, JJ. June 7, 1873.]

**236.** Whoever, being within British India, abets the counterfeiting Ditto.

Abetting in India the counterfeiting out of India of coin.

of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

**237.** Whoever imports into British India, or exports therefrom, any

Import and export of counterfeit coin.

counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

MERCHANTS in various parts of the country had been in the habit for many years of sending copper to the Nawab of Loharoo, who turned the metal, in mints established for the purpose, into small round pieces, upon which a certain stamp was impressed, the stamp not purporting to resemble the mark on any legal coin. These pieces of copper were then sold in the bazars in British India by weight, and used as money. It was generally believed that the Nawab had authority to establish the mints and issue this copper as coin. Held that the pieces of copper were not counterfeit coin.—*Premsookh Dass v. Crown*, Panj. Rec., No. 38 of 1870. But see the amended definition of "coin."

**238.** Whoever imports into British India, or exports therefrom, any

Import or export of counterfeit of the Queen's coin.

counterfeit coin which he knows or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**239.** Whoever, having any counterfeit coin, which, at the time when

Delivery to another of coin, possessed with the knowledge that it is counterfeit.

he became possessed of it, he knew to be counterfeit, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

S. 239 of the Penal Code is directed against a person other than the coiner, who procures or obtains or receives counterfeit coin, and not to the offence committed by the coiner.—*Queen v. Sheobux alias Sheopershad*, 3 N. W. P. 150. [Turner, J. June 23, 1871.]

**240.** Whoever, having any counterfeit coin which is a counterfeit of

Delivery of Queen's coin, possessed with the knowledge that it is counterfeit.

the Queen's coin, and which, at the time when he became possessed of it, he knew to be a counterfeit of the Queen's coin, fraudulently or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

WHERE the charge is one of counterfeiting Queen's coin, direct proof of fabrication is not necessary to render the person punishable under the sections of the Penal Code with

reference to the uttering of false coin. All that is required is a guilty knowledge of the spuriousness of the coin at the time of receiving possession of it, or the absence of such guilty knowledge at first. Such guilty knowledge may be proved either directly or indirectly from surrounding circumstances.—*Parushullah Mundul v. Kheroo Mundul*; *Queen v. Gurib Shek*; *Ram Ruttun Saha v. Bawool Mundul*, 23 W. R. 4. [Kemp and Birch, JJ. [Nov. 30, 1874.]

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**241.** Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin, which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

#### Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them, knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them, not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit, and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under s. 239 or 240, as the case may be.

#### CHARGE.

*First.*—That you, on or about the      day of      , at      , knowing a coin to be counterfeit, delivered the same to another person, by name A. B., as genuine, and thereby committed an offence punishable under s. 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*Secondly.*—That you, on or about the      day of      , at      , knowing a coin to be counterfeit, attempted to induce another person, by name A. B., to receive it as genuine, and thereby committed an offence punishable under s. 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XVIII. (II.).

WHERE the prisoner, being in possession of a counterfeit coin, handed it to a friend, in order to avoid its being discovered by the police in his (prisoner's) possession, it was held that no offence had been committed under s. 241, as the coin was not delivered as genuine. The gist of an offence under s. 241 (passing as genuine coin known to be counterfeit) is that a person should deliver or attempt to induce any other person to receive as genuine coin known to be counterfeit.—*Queen v. Soorat*, 4 N. W. P. 62. [Spankie, J. April 27, 1872.]

WHERE the charge is one of counterfeiting Queen's coin, direct proof of fabricating is not necessary to render the person punishable under the sections of the Penal Code with reference to the uttering of false coin. All that is required is a guilty knowledge of the spuriousness of the coin at the time of receiving possession of it, or the absence of such guilty knowledge at first. Such guilty knowledge may be proved either directly or indirectly from surrounding circumstances.—*Parushullah Mundul v. Kheroo Mundul*; *Queen v. Gurib Shek*; *Ram Ruttun Saha v. Bawool Mundul*, 23 W. R. 4. [Kemp and Birch, JJ. Nov. 30, 1874.]

Ct. of Ses.  
Presy. Mag.,  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**242.** Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**243.** Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Possession of Queen's coin by person who knew it to be counterfeit when he became possessed thereof.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

A PRISONER, who was charged under s. 243, admitted possession, but denied fraudulent intention. In spite of the denial of fraudulent intention, the Sessions Judge recorded a plea of guilty, and convicted the accused thereon. In appeal it was held that the conviction was bad, as the admission of possession on the part of the prisoner did not extend to an admission of fraud, which was the gist of the offence.—5 N. A., N. W. P., Part II., 217, 1864.

**244.** Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in mint causing coin to be of different weight or composition from that fixed by law.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**245.** Whoever, without lawful authority, takes out of any mint, lawfully established in British India, any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Unlawfully taking from a mint any coining instrument.

Ditto.

**246.** Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of coin.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

*Explanation.*—A person who scoops out part of the coin, and puts anything else into the cavity, alters the composition of that coin.

**247.** Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing weight or altering composition of Queen's coin.

Ditto.

**248.** Whoever performs on any coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of coin with intent that it shall pass as coin of different description.

Ditto.

**249.** Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of Queen's coin with intent that it shall pass as coin of different description.

Ditto.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**250.** Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Ditto.

**251.** Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

**252.** Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ditto.

**253.** Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**254.** Whoever delivers to any other person as genuine, or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine, or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in section 246, 247, 248, or 249, has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed or attempted to be passed.

Ct. of Ses.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

**255.** Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation.*—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

**256.** Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of instrument or material for purpose of counterfeiting Government stamp. Ct. of Ses. Cognizable. Warrant. Bailable. Not comp.

**257.** Whoever makes, or performs any part of the process of making, or buys, or sells, or disposes of, any instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for purpose of counterfeiting Government stamp. Ditto.

**258.** Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government stamp. Ditto.

**259.** Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of counterfeit Government stamp. Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Bailable. Not comp.

**260.** Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Using as genuine Government stamp known to be counterfeit. Ditto.

**261.** Whoever, fraudulently or with intent to cause loss to Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue, any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Effacing writing from, substance bearing Government stamp, or removing from document a stamp used for it, with intent to cause loss to Government. Ditto.

**262.** Whoever, fraudulently or with intent to cause loss to Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Using a Government stamp known to have been before used. Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.



Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

**263.** Whoever, fraudulently or with intent to cause loss to Government, Erasure of mark denoting that stamp has been used. erases or removes from a stamp issued by Government for the purpose of revenue any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

### CHAPTER XIII.

#### OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Summons.  
Bailable.  
Not comp.

**264.** Whoever fraudulently uses any instrument for weighing, which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

INTENTION is an essential part of the offence of fraudulently using false instruments for weighing; and in the absence of any evidence of such intention in this case, the Court quashed the conviction, and directed the return of the fines.—*Government v. Kangalee Muduk and others*, 18 W. R. 7. [Kemp and Glover, JJ. June 3, 1872.]

Ditto.

**265.** Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity, or a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Ditto.

**266.** Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

THE mere possession of weights in excess of the authorized standard will not support a conviction under s. 266 of the Penal Code. A fraudulent intent must be charged and proved.—*Reg. v. Dámodhar Dálji*, 1 Bom. H. C. R. 181. [Couch and Tucker, JJ. Jan. 27, 1864.]

THE mere possession of false weights or measures will not in itself raise any strong presumption of fraud, as they may have been put away so as not to be used. The fraudulent intent will be shown greatly by the place where they are found. Suppose a false balance was found fixed to a tradesman's counter where he was accustomed to sell his goods, and where was no other in the place. There would be, in the case, the strongest possible presumption that the possession was not innocent. On the other hand, suppose he had true balances in his shop, but an untrue one stowed away in an attic with a lot of lumber, there the presumption would be against fraud. A farmer had in his house a balance or portable weighing machine and two iron weights which were found by the inspector to be light. The inspector saw no produce about the premises, and could not prove that the farmer exposed or kept for sale, or weighed for conveyance or carriage, any goods or produce, and it was held that the conviction of the farmer was wrong.—*Griffiths v. Place*, 20 L. T. N. S. 484.

Ditto.

**267.** Whoever makes, sells, or disposes of, any instrument for weighing, or any weight, or any measure of length or capacity, which he knows to be false, in order that the

same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

## CHAPTER XIV.

### OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

**268.** A person is guilty of a public nuisance, who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.

Public nuisance.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

NUISANCES punishable under the Penal Code may still be made the subject of civil action, before or without prosecution.—*Jiná Ranchhod v. Jodhá Ghellá*, 1 Bom. H. C. B. 1. [Forbes and Newton, JJ. June 30, 1863.]

A COMMON gaming-house is one which is kept or used for profit or gain, and may constitute a public nuisance; but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance within the meaning of s. 268 of the Penal Code.—*Reg. v. Háu Nágji*, 7 Bom. H. C. B. 74. [Gibbs and Melvill, JJ. Dec. 1, 1870.]

AT A certain village where a fair was annually held, the lambardárs made arrangements at the time of the fair every year for the public sanitation of the place. In March 1875, the Deputy Commissioner, going to the place, found that the usual arrangements had not been made for the fair, and that the public road was several hundred yards covered with fetid matter. The Deputy Commissioner tried the lambardárs for committing a public nuisance, and convicted them. *Held* (by the Chief Court) that the conviction was bad, as there was no legal omission on the part of the lambardárs.—*Crown v. Guj Sing*, Panj. Rec., No. 11 of 1875.

KEEPING dogs which make noises in the night amounts to a public nuisance.—2 Chit. Crim. Law, 647; 1 Russ. 452.

WHERE, upon an indictment against a tinman for the noise made by him in carrying on his trade, it appeared in evidence that the noise only affected the inhabitants of three sets of chambers in Clifford's Inn, and that by shutting the windows the noise was, in a great measure, prevented, it was ruled by Lord Ellenborough, C.J., that the indictment could not be sustained, as the annoyance was, if anything, a private nuisance.—*Rex v. Lloyd*, 1 Russ. 318.

**269.** Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Negligent act likely to spread infection of any disease dangerous to life

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.

INOCULATION in itself is not an illegal or negligent act, and unless it is proved that the act was done negligently, with the knowledge or belief that it was likely to spread the infection of a disease dangerous to life, or that there was negligent dealing with the patient after inoculation with the knowledge or belief as aforesaid, there can be no conviction in respect of such an act under s. 269.—*Mad. H. C. Bul.*, July 10th 1867; 2 *Mad. Jur.* 324.

ACCUSED were convicted, under s. 269, for allowing accumulation of filth and manure in their villages. *Held* that this could not be construed into an act likely to spread infection of dangerous disease within the meaning of the section.—*Crown v. Buta Singh, Panj. Rec., No. 25 of 1872.*

K, KNOWING that he was suffering from cholera, entered a train as a passenger without informing the Railway Company's servants of his condition. M, knowing of K's condition, bought K's ticket, and travelled with him. *Held* that K was properly convicted under s. 269 of the Penal Code of negligently doing an act which was, and which he had reason to believe was, likely to spread infection of a disease dangerous to life, and M of abetment of K's offence.—*Queen-Empress v. Krishnappa, I. L. R., 7 Mad. 276. [Turner, C.J., and Kernan, J. Dec. 14, 1883.]*

A PROSTITUTE, who, while suffering from syphilis, communicates the disease to a person who has sexual intercourse with her, is not liable to punishment under s. 269 of the Penal Code (Act XLV. of 1860) "for a negligent act and one likely to spread infection of any disease dangerous to life." *Semble*.—She may be charged with cheating under s. 417 or 420, if the intercourse was induced by any misrepresentation on her part.—*Queen-Empress v. Rakhmá, I. L. R., 11 Bom. 59. [West and Nánábhái Haridas, JJ. Sep. 30, 1886.]*

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

**270.** Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Summons.  
Bailable.  
Not comp.

**271.** Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places,\* shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Ditto.

**272.** Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ditto.

**273.** Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

ACCUSED sold a quantity of *atta* at the rate of 18 seers per rupee; the price of *atta* of good quality being a rupee for fifteen seers. A medical officer deposed that the *atta* was "old and gritty," and "would be bad for the health, if eaten." Accused told the purchaser at the time of the sale that the *atta* was being sold cheap because it was "bad" or of an inferior quality. *Held* that the facts did not warrant a conviction under s. 273.—*Crown v. Gunesh, Panj. Rec., No. 15 of 1873.*

\* See Act I. of 1870 (to provide rules relating to quarantine).

**274.** Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Presy. Mag. 1  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Summons.  
Bailable.  
Not comp.

**275.** Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of adulterated drugs.

Ditto.

**276.** Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of any drug as a different drug or preparation.

Ditto.

**277.** Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Fouling the water of a public spring or reservoir.

Any Mag.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

THE words "public spring or reservoir," used in s. 277 of the Penal Code, do not include a public river. The strewing of branches in a river for fishing purposes, held therefore to be no offence under that section.—*Empress v. Halodhur Pore*, I. L. R., 2 Cal. 383. [Markby and Prinsep, JJ. May 7, 1877.]

THE term "public spring" in s. 277 of the Penal Code does not include a continuous stream of water running along the bed of a river.—*Reg. v. Vitti Chokkan*, I. L. R., 4 Mad. 229. [Innes and Muttusami Ayyar, JJ. Oct. 21, 1881.]

**278.** Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood, or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Making atmosphere noxious to health.

Any Mag.  
Uncog.  
Summons.  
Bailable.  
Not comp.

**279.** Whoever drives any vehicle, or rides, on any public way, in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Rash driving or riding on a public way.

Any Mag.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

THE actual driver, and not the owner, of a carriage, is liable under s. 279 of the Penal Code in case of a collision and injury to another arising out of rash driving.—*Larrymore (A. W.) v. Fernendoo Deo Rai*, 14 W. R. 32. [Bayley and Kemp, JJ. Aug. 13, 1870.]

DEFENDANT was convicted under s. 338 of the Penal Code of causing 'grievous hurt. The evidence showed that the defendant was being driven in a carriage to her house through the streets of the town between the hours of 7 and 8 P.M.; that the carriage was being driven at an ordinary pace and in the middle of the road; that the night was dark and the carriage without lamps, but that the horse-keeper and coachman were shouting out to warn foot-passengers; that the defendant's carriage came into contact with the complainant's father, an old deaf man, and that complainant's father was thereupon knocked down, run over, and killed. *Held*, upon a reference, that the question for the Court was whether there was any evidence that the death of the deceased was induced by an act negligently and rashly directed by the accused, and that there was no such evidence. The conviction was accordingly quashed.—*Pro.*, Aug. 17, 1871, 6 Mad. H. C. R. Ap. 31.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

**280.** Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ct. of Ses.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

**281.** Whoever exhibits any false light, mark, or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

**282.** Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

BOATMEN who ply an unseaworthy vessel, whereby the lives of passengers for hire are endangered, should be charged under s. 282, and not under s. 336 of the Penal Code.—*Reg. v. Khodá Jágatá*, 1 Bom. H. C. R. 137. [*Forbes and Couch*, JJ. Jan. 8, 1864.]

Ditto.

**283.** Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger or obstruction in a public way or navigation, shall be punished with imprisonment of either description for a term which may extend to two hundred rupees.

WHERE an accused, for having repaired a public road without having previously asked for leave to repair it, was, on a simple petition, charged with having obstructed the road, and the complainant never appeared, *held* that the Deputy Magistrate ought to have dismissed the complaint.—*Queen v. Bholanath Banerjee*, 7 W. R. 31. [*Kemp and Markby*, JJ. Feb. 16, 1867.]

To spread fishing nets by the side of a thoroughfare in a town is neither an offence punishable under cl. 3, s. 48, Act XXIV., 1859, nor, without proof of obstruction caused to any particular person or class of persons, under s. 283, Penal Code. The following is a full report of the case: "In this case the prosecutor (a policeman) deposed that he saw a bad-smelling net dried on the road by the side of the house of the first accused, so as to cause obstruction to persons passing by. The second accused admitted the net was his, and had been left there by him. The Magistrate convicted the second accused under cl. 3, s. 48, Madras Police Act (XXIV. of 1859), and fined him one rupee. The case was referred by the District Magistrate of Madura for the orders of the High Court on the ground that the action of the accused in drying nets in the street did not, in his opinion, constitute such an obstruction as is contemplated in cl. 3, s. 48, Act XXIV., 1859. No one appeared at the hearing. The Court (Innes and Muttusámi Ayyár, JJ.) delivered the following judgment: 'Cl. 3, s. 48, Madras Police Act (XXIV. of 1859), under which

the accused has been convicted, refers to obstruction of the road or street caused by *cattle* or by *conveyances*, in certain circumstances therein detailed. The act of the accused in spreading fishing nets by the side of the road was clearly, therefore, not punishable under this clause of s. 48 of the Act. The present conviction cannot also, in our opinion, be sustained as a conviction under s. 283, Penal Code, because, although it is stated in the evidence, in general terms, that obstruction was caused, it does not appear that obstruction was caused to any particular individual or individuals. The conviction is accordingly quashed. The fine collected from the accused must be refunded.'—Reg. v. Khader Moidin, I. L. R., 4 Mad. 235. [Innes and Muttusámi Ayyár, JJ. Nov. 7, 1881.]

## 284. Whoever does, with any poisonous substance, any act in a man-

Negligent conduct with respect to any poisonous substance.

ner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

## 285. Whoever does, with fire or any combustible matter, any act so

Negligent conduct with respect to fire or combustible matter.

rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Any Mag. Cognizable Summons. Bailable. Not comp.

THE word "injury" (rashly caused by fire, &c.) in s. 285 of the Penal Code includes any harm illegally caused to the property of any other person, and is not confined to injury to the person only.—Reg. v. Náthá Lállá, 5 Bom. H. C. R. 67. [Newton and Tucker, JJ. Aug. 6, 1868.]

## 286. Whoever does, with any explosive substance, any act so rashly

Negligent conduct with respect to explosive substance.

or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Ditto.

C HAVING returned to his house after dawn from watching his crops at night with a loaded gun, and finding his house-door locked, placed the gun, loaded, with the hammer down on the cap, on a cot outside his house, and went for a short time to a neighbouring house. A, the child of a neighbour, four years old, was killed by the gun exploding. C was convicted under s. 286 of the Penal Code for negligently omitting to take order with the gun sufficient to guard against probable danger to human life. Held that the conviction was bad in law.—Queen-Empress v. Chenchugadu, I. L. R., 8 Mad. 421. [Brandt, J. April 30, 1885.]

## 287. Whoever does, with any machinery, any act so rashly or negli-

Negligent conduct with respect to machinery in possession or under charge of offender.

gently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Summons.  
Bailable.  
Not comp.

**288.** Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Any Mag.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

**289.** Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

A PONY is an animal within the provisions of s. 289. To sustain a charge under s. 289 there should be evidence not only of negligence, but also that such negligence would probably lead to danger to human life or of grievous hurt.—*Pro.*, April 8, 1867, 3 *Mad. H. C. R. Ap.* 33.

THE order of a Deputy Magistrate prohibiting the owners of cattle from allowing their animals to stray, and a conviction under s. 289 of the Penal Code against the accused for permitting his pony to stray, were quashed as illegal upon a reference under s. 434 of the Code of Criminal Procedure (Act X. of 1872), corresponding with ch. 32 of the new Code of Criminal Procedure (Act X. of 1882).—*Government v. Mozuffer Khalifa*, 18 *W. R.* 21; 9 *B. L. R. Ap.* 36. [*Kemp and Glover, JJ.* June 21, 1872.]

THE High Court refused to interfere with an order passed under s. 289 of the Penal Code by a Magistrate fining the owner of a pony which had been tied negligently, and which was running about loose in a crowded bazar, and thereby endangering the lives and limbs of persons, that section referring not only to savage animals, but to any animal.—*Chand Mandal, Petitioner*, 19 *W. R.* 1. [*Kemp and Glover, JJ.* Nov. 29, 1872.]

Any Mag.  
Uncog.  
Summons.  
Bailable.  
Not comp.

**290.** Whoever commits a public nuisance in any case not otherwise punishable for public nuisance, shall be punished with fine which may extend to two hundred rupees.

THE omission of a person to keep his ponies from straying is not a public nuisance punishable under s. 290 of the Penal Code.—*Joynath Mundul and others v. Jamul Sheikh and another*, 6 *W. R.* 71. [*Kemp and Markby, JJ.* Sep. 8, 1866.]

THE establishment of a butcher's shop is not an indictable nuisance under s. 290, but may become a nuisance if it be carried on in such a way as to be offensive to a section of the community or without due regard to the feelings of any class.—*Eesa v. Keemoo, Panj. Rec.*, No. 18 of 1867.

IN a case of public nuisance under s. 290 of the Penal Code, it must be proved that injury, danger, or annoyance, has been caused either in regard to the enjoyment of property, or the exercise of a public right on the part of a portion of the community, or of any particular class of people. The fact that there is a special law to meet a particular offence (in this case, cattle-trespass) does not prevent the punishment of the offenders under the Penal Code, if an offence which could have been rightly punished under the Penal Code was established.—*Onooram v. Lamessor; Webster v. Keena and others*, 9 *W. R.* 70. [*Phear and Hobhouse, JJ.* May 23, 1868.]

THE sentence of imprisonment in default of the payment of a fine inflicted under s. 290 of the Penal Code (for committing a public nuisance) should be one of simple, not rigorous imprisonment.—*Reg. v. Santu bin Lakhappá Kore*, 5 *Bom. H. C. R.* 45. [*Couch, C.J., and Newton, J.* June 17, 1868.]

CERTAIN Hindus charged certain Muhammadans with nuisance, in that they had opened a cook-shop, and carried on their business in a manner calculated to give annoyance. Disputes on this nature being frequent, the Magistrate ordered the shop to be closed, pending reference to a committee of respectable Hindus and Muhammadans of the city, in conjunction with whom he prepared and promulgated for observance by both sects a set of rules, which included rules for the management of a Hindu temple and a Muhammadan mosque in the neighbourhood. *Held* that the Magistrate had no authority to interfere in the management of the temple and mosque, and should have confined himself to deciding whether the shop complained of was or was not a nuisance; that that was a question which did not depend entirely on the shop being a cook-shop, or on beef being sold there (though that might, under certain circumstances, amount to a nuisance), but whether the business of the shop (in itself a lawful business) was or was not conducted in such a manner as to give annoyance to the public in the vicinity.—*Assa Nund v. Hossein Buksh, Panj. Rec.*, No. 15, of 1868.

A PROSTITUTE, by visiting a dāk-bungalow at the request of a person staying there, but against whom there is no evidence of any impropriety of speech, or gesture, or act, or that she had occasioned annoyance to the public generally, or to any persons who, in the exercise of their public right, were lodging in the bungalow, is not liable to be convicted under s. 290 of the Penal Code as having committed a public nuisance.—*Queen v. Mussumat Begum*, 2 N. W. P. 349. [Turner, Offg. C.J., and Turnbull, J. Aug. 18, 1870.]

A COMMON gaming-house in one which is kept or used for profit or gain, and may constitute a public nuisance; but it cannot be held, in the absence of evidence of any actual annoyance to the public, that every person who admits gamblers into his house, and all persons who game therein, are guilty of a public nuisance within the meaning of s. 268 of the Penal Code.—*Reg. v. Háu Nággi*, 7 Bom. H. C. R. 74. [Gibbs and Melvill, JJ. Dec. 1, 1870.]

THE petitioners, who filled up a portion of a ditch or drain, which formed part of a public way, and which belonged to the public, instead of being convicted of a nuisance punishable under s. 290, Penal Code, were convicted of criminal trespass. But inasmuch as they had not been sentenced to a heavier punishment than might have been awarded if they had been convicted of a nuisance, the High Court declined to interfere.—*Roopnarain Dutt and another, Petitioners*, 18 W. R. 88. [Couch, C.J., and Ainslie, J. Aug. 2, 1872.]

THE trial of 14 persons together charged with distinct offences (committing public nuisance) under ss. 290 and 291 of the Penal Code was held an irregularity calculated to prejudice the accused. Convictions quashed.—*Pulisanki Reddi v. Reg.*, 1. L. R., 5 Mad. 20. [Innes and Muttusámi Ayyár, JJ. Feb. 24, 1882.]

A SENTENCE of rigorous imprisonment in default of payment of fine for the offence of nuisance under s. 290 of the Penal Code is legal.—*Reg. v. Yellamandu*, 1. L. R., 5 Mad. 157. [Innes and Muttusámi Ayyár, JJ. Mar. 14, 1882.]

OMISSION to fence a well on private ground within eight yards of a highway, and open to it, is not punishable as a public nuisance.—*Queen v. Anthony*, 1. L. R., 6 Mad. 280. [Innes and Kernan, JJ. Feb. 23, 1883.]

CERTAIN Mahomedan inhabitants of a village erected, during the Muharram, a temporary shed on land forming part of the village-site, and placed in the shed a religious symbol. They were convicted by a Magistrate under s. 290 of the Penal Code of committing a public nuisance, on the ground that their act was certain to cause annoyance to the Hindu inhabitants of the village whose temples were in the vicinity, and was, therefore, calculated to lead to a breach of the public peace. *Held* that the conviction was illegal.—*Muttumira v. Queen-Empress*, 1. L. R., 7 Mad. 590. [Turner, C.J., and Hutchins, J. Sep. 18, 1884.]

291. Whoever repeats or continues a public nuisance, having been en- Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Not comp.  
 joined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.



BEFORE a conviction can be had of committing a public nuisance under s. 291, there must be proof that there was a previous conviction of an offence and an injunction by a public servant to desist from continuing such nuisance.—In the *Matter of Mohesh Chunder and others, Prisoners*, 20 W. R. 55. [Jackson and Mitter, JJ. May 21, 1873.]

THE trial of 14 persons together charged with distinct offences (committing public nuisances) under ss. 290 and 291 of the Penal Code was held an irregularity calculated to prejudice the accused. Convictions quashed—*Pulisanki Reddi and others v. Reg.*, I. L. R., 5 Mad. 20. [Innes and Muttusami Ayyar, JJ. Feb. 24, 1882.]

To support a conviction under s. 291 of the Penal Code, there must be proof of an injunction to the accused individually against repeating or continuing the same particular public nuisance. It must be shown that the person convicted had, on some previous occasion, committed the particular nuisance, had been enjoined not to repeat or continue it, and had repeated or continued it. The authority under which a Magistrate can order or enjoin a person against repeating or continuing a public nuisance is s. 143 of the Criminal Procedure Code. It is the infringement of this order that is punishable under s. 291 of the Penal Code. What is contemplated is an order addressed to a particular person. A Magistrate's powers to deal with public nuisances are contained in chaps. 10 and 11 of the Criminal Procedure Code. Ch. 11 is only properly applicable to temporary orders in urgent cases. It is only in such cases that an order may be made *ex parte*, and any exception is allowed to the general rule that it shall be directed to a particular individual. In such emergent cases an order may, under s. 144 of the Code, be directed to the public generally, when frequenting or visiting a particular place, to abstain from a certain act; but this provision does not apply to a proclamation directed, not to the public generally, frequenting or visiting a particular place, but to a portion of the community.—*Queen-Empress v. Jokhu*, I. L. R., 8 All. 99. [Oldfield, J. Jan. 15, 1886.]

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

**292.** Whoever sells or distributes, imports or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation, or figure, or attempts or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both,

*Exception.*—This section does not extend to any representation sculptured, engraved, painted, or otherwise represented, on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

A CHARGE under ss. 292 and 294 of the Penal Code should be made specific in regard to the representations and words alleged to have been exhibited and uttered, and to be obscene; and the Magistrate, in convicting, should, in his decision, state distinctly what were the particular representations and words which he found on the evidence had been exhibited and uttered, and which he adjudged to be obscene within the meaning of those sections. Where no such specific decision has been given, the High Court, when the case has been transferred under s. 147, Act X. of 1875 (corresponding with s. 526, Act X. of 1882), may either try the case *de novo*, or dismiss it on the ground that the Magistrate has come to no finding on which the conviction can be sustained.—*Reg. v. Upendronath Doss*, I. L. R., 1 Cal. 356. [Phear and Markby, JJ. Mar. 20, 1876.]

Ditto.

**293.** Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section for the purpose of sale, distribution, or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

A BOOK may be obscene within the meaning of the Penal Code, although it contains but a single obscene passage. The defence to a charge of selling and distributing certain obscene books was that they were sold and distributed in good faith in prosecution of a religious controversy. Held that the excessive obscenity of such books took away the protection which their controversial nature might otherwise have afforded them. Also that

the intention of the seller and distributor must be gathered from the character of the matter contained in such books. As he had chosen to sell and distribute what was obscene, it must be presumed that he intended the natural consequences of his act, namely, corruption of the minds and prejudice of the morals of the public. It was not sufficient for him to say that his intentions were good. It was his public act that must be the test of his intentions; and having done an unlawful act, it was no answer to say that he thought it lawful. *Queen v. Hicklin* (L. R. 3 Q. B. 360) and *Steele v. Brannan* (L. R. 7 Q. P. 261) followed. At the conclusion of the trial of a person for the sale and distribution of obscene books, the Court trying him ordered the destruction of certain copies of such books, voluntarily surrendered by him, under s. 418 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 517 of the new Code of Criminal Procedure (Act X. of 1882). *Held* that such Court was not empowered by that section to make such an order.—*Empress v. Inderman*, I. L. R., 3 All. 837. [Straight, J. June 3, 1881.]

**294.** Whoever sings, recites, or utters, in or near any public place, any obscene song, ballad, or words, to the annoyance of others, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

A MAGISTRATE, F. P., had convicted certain persons, under s. 294, for singing obscene songs, on a complaint charging them with repeating *laanya*, which, though often, are not always obscene. There being no evidence that the *laanya* repeated by the accused were obscene, the convictions and sentences were reversed.—*Reg. v. Ganubin Krishna Gurav*, 4 Bom. H. C. R. 25. [Couch, C.J., and Newton, J. Mar. 6, 1867.]

A CHARGE under ss. 292 and 294 should be made specific in regard to the representations and words alleged to have been exhibited and uttered, and to be obscene; and the Magistrate, in convicting, should, in his decision, state definitely what where the particular representations and words which he found on the evidence had been exhibited and uttered. Where no such specific decision has been come to, the High Court, when the case has been transferred under Act X. of 1875, s. 147 (corresponding with Act X. of 1882, s. 520), may either try the case *de novo*, or dismiss it on the ground that the Magistrate has come to no finding on which the conviction can be sustained.—*Reg. v. Upendronath Dass* and another, I. L. R., 1 Cal. 356. [Phear and Markby, JJ. Mar. 9, 16, 20, 1876.]

**294A.** Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear, doing any thing for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number, or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.\*

Any Mag.  
Uncog.  
Summons.  
Bailable.  
Not comp.

No charge of an offence punishable under s. 294A shall be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Local Government.—Act XXVII. of 1870, s. 14.

THE sanction of the Local Government is necessary before a charge for keeping a lottery-office under s. 10, Act XXVII. of 1870, can be instituted.—*Government v. Nga Cho*, 15 W. R. 2; 6 B. L. R. Ap. 98. [Norman, Offg. C.J., and Loch, J. Jan. 17, 1871.]

THE expression "in any such lottery" in para. 2 of s. 294A of the Penal Code means "any lottery not authorized by Government," and includes a foreign lottery. The word "publisher" in the above paragraph includes both the person who sends a proposal as well as the proprietor of a newspaper who prints the proposal as an advertisement. The proprietor of a Bombay newspaper who published an advertisement in his paper relating to a Melbourne lottery was accordingly held to be punishable under s. 294A of the Penal Code.—*Queen-Empress v. Manchérji Kavasji Shapurji*, I. L. R., 10 Bom. 97. [Nánábhái Haridás and Wedderburn, JJ. Aug. 18, 1885.]

\* New section, inserted by Act XXVII. of 1870, s. 10.

## CHAPTER XV.

## OF OFFENCES RELATING TO RELIGION.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

**295.** Whoever destroys, damages, or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons, or with the knowledge that any class of persons is likely to consider such destruction, damage, or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

R, a Hindu, had sexual intercourse with a woman within an enclosure surrounding the tomb of a Muhammadan fakir. He was convicted under s. 295 of the Penal Code. *Held* that, in the absence of proof that the place was used for worship or otherwise held sacred, the conviction was bad, and that it should be altered to a conviction under s. 297 of the said Code.—*In re Ratna Mudali*, I. L. R., 10 Mad. 126. [Muttusámi Ayyár and Brandt, JJ. Dec. 29, 1886.]

Ditto.

**296.** Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

A MASJID was used by the members of a sect of Mahomedans called the Hanifis, according to whose tenets the word "ámen" should be spoken in a low tone of voice. While the Hanifis were at prayers, R, a Mahomedan of another sect, entered the masjid, and in the course of the prayers, according to the tenets of his sect, called out "ámen" in a loud tone of voice. For this act he was convicted of voluntarily disturbing an assembly engaged in religious worship, an offence punishable under s. 296 of the Penal Code. The Full Bench (Mahmood, J., dissenting) ordered the case to be re-tried, and that, in re-trying it, the Magistrate should have regard to the following questions, namely, (1) Was there an assembly lawfully engaged in the performance of religious worship? (2) Was such assembly, in fact, disturbed by the accused? (3) Was such disturbance caused by acts and conduct on the part of the accused by which he intended to cause such disturbance, or which acts and conduct, at the time of such acts and conduct, he knew or believed to be likely to cause such disturbance? *Held* by Mahmood, J., that the discussion occasioned by the act of the accused having, presumably, taken place during the interval when the prayers were not going on, the assembly was not at that time "engaged in the performance of religious worship," and was not "disturbed" within the meaning of s. 296 of the Penal Code; that in reference to the terms of s. 39 of the Code, the accused did not disturb the assembly "voluntarily;" that he was justified by the Mahomedan ecclesiastical law in entering the mosque, and joining the congregation in saying the word "ámen" loudly if he thought fit, and his conduct fell within the purview of s. 79 of the Penal Code, and was therefore not an offence under s. 296. *Beatty v. Gillbanks* (L. R., 9 Q. B. D. 308) referred to. Also *per* Mahmood J., that, having regard to the guarantee given by the Legislature to s. 24 of Act VI. of 1871 (Bengal Civil Courts Act), that the Mahomedan law shall be administered in all questions regarding "any religious usage or institution," the Court was bound by s. 57 of Act I. of 1872 (Evidence Act) to take judicial notice of the Mahomedan ecclesiastical law, and the rules of that law need not be proved by specific evidence.—*Queen-Empress v. Ramzan*, I. L. R., 7 All. 461. [Petheram, C.J., and Straight, Oldfield, Brodhurst, and Mahmood, JJ. Mar. 7, 1885.]

Ditto.

**297.** Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship, or on any place of sepulture, or any place set apart for the performance of funeral

rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

A, B, C, and D, were co-owners of a plot of land in which they were accustomed to bury their dead. A and B opened a sawpit close to the graves of D's relatives, but did not disturb any of the graves. *Held* that they were wrongly convicted under s. 297 of the Penal Code.—*In re Khaja Muhammad Hamin Khan*, I. L. R., 3 Mad. 178. [Turner, C.J., and Hutchins, J. April 27, 1881.]

298. Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Summons.  
Bailable.  
Comp.

THE Madras High Court has ruled that the interpolation of a forbidden chant in an authorized ritual amounts to an offence under the Penal Code.—*Narasimah Charriar v. Shree Krishna Lala Cherya*, 2 Mad. Jur. 236.

## CHAPTER XVI.

### OF OFFENCES AFFECTING THE HUMAN BODY.

#### *Of Offences affecting Life.*

#### REPORT OF THE INDIAN LAW COMMISSIONERS ON OFFENCES AGAINST THE BODY.

THE first class of offences against the body consists of those offences which affect human life; and highest in this first class stand those offences which fall under the definition of voluntary culpable homicide.

This important part of the law appears to us to require fuller explanation than almost any other.

The first point to which we wish to call the attention of His Lordship in Council is the expression "omits what he is legally bound to do," in the definition of voluntary culpable homicide. These words, or other words tantamount in effect, frequently recur in the Code. We think this the most convenient place for explaining the reason which has led us so often to employ them. For if that reason shall appear to be sufficient in cases in which human life is concerned, it will, *a fortiori*, be sufficient in other cases.

Early in the progress of the Code it became necessary for us to consider the following question: When acts are made punishable on the ground that those acts produce, or are intended to produce, or are known to be likely to produce, certain evil effects, to what extent ought omissions which produce, which are intended to produce, or which are known to be likely to produce, the same evil effects, to be made punishable?

Two things we take to be evident: first, that some of these omissions ought to be punish-

ed in exactly the same manner in which acts are punished; secondly, that all these omissions ought not to be punished. It will hardly be disputed that a gaoler who voluntarily causes the death of a prisoner by omitting to supply that prisoner with food, or a nurse who voluntarily causes the death of an infant entrusted to her care by omitting to take it out of a tub of water into which it has fallen, ought to be treated as guilty of murder. On the other hand, it will hardly be maintained that a man should be punished as a murderer because he omitted to relieve a beggar, even though there might be the clearest proof that death of the beggar was the effect of this omission, and that the man who omitted to give the alms knew that the death of the beggar was likely to be the effect of the omission. It will hardly be maintained that a surgeon ought to be treated as a murderer for refusing to go from Calcutta to Meerut to perform an operation, although it should be absolutely certain that this surgeon was the only person in India who could perform it, and that, if it were not performed, the person who required it would die. It is difficult to say whether a Penal Code which should put no omissions on the same footing with acts, or a Penal Code which should put all omissions on the same footing with acts, would produce consequences more absurd and revolting. There

REPORT OF THE INDIAN LAW COMMISSIONERS ON OFFENCES AGAINST THE BODY—*contd.*

is no country in which either of these principles is adopted. Indeed, it is hard to conceive how, if either were adopted, society could be held together.

It is plain, therefore, that a middle course must be taken. But it is not easy to determine what that middle course ought to be. The absurdity of the two extremes is obvious. But there are innumerable intermediate points; and wherever the line of demarcation may be drawn, it will, we fear, include some cases which we might wish to exempt, and will exempt some which we might wish to include.

Mr. Livingston's Code provides that a person shall be considered as guilty of homicide who omits to save life, which he could save "without personal danger or pecuniary loss." This rule appears to us to be open to serious objection. There may be extreme inconvenience without the smallest personal danger, or the smallest risk of pecuniary loss, as in the case which we lately put of a surgeon summoned from Calcutta to Meerut to perform an operation. He may be offered such a fee that he would be a gainer by going. He may have no ground to apprehend that he should run any greater personal risk by journeying to the Upper Provinces than by continuing to reside in Bengal. But he is about to proceed to Europe immediately, or he expects some members of his family by the next ship, and wishes to be at the Presidency to receive them. He, therefore, refuses to go. Surely, he ought not, for so refusing, to be treated as a murderer. It would be somewhat inconsistent to punish one man for not staying three months in India to save the life of another, and to leave wholly unpunished a man who, enjoying ample wealth, should refuse to disburse an anna to save the life of another. Again, it appears to us that it may be fit to punish a person as a murderer for causing death by omitting an act which cannot be performed without personal danger or pecuniary loss. A parent may be unable to procure food for an infant without money. Yet the parent, if he has the means, is bound to furnish the infant with food; and if, by omitting to do so, he voluntarily causes its death, he may, with propriety, be treated as a murderer. A nurse hired to attend a person suffering from an infectious disease cannot perform her duty without running some risk of infection. Yet if she deserts the sick person, and thus voluntarily causes his death, we should be disposed to treat her as a murderer.

We pronounce with confidence, therefore, that the line ought not to be drawn where Mr. Livingston has drawn it. But it is with great diffidence that we bring forward our

own proposition. It is open to objections: cases may be put in which it will operate too severely, and cases in which it will operate too leniently: but we are unable to devise a better.

What we propose is this, that where acts are made punishable on the ground that they have caused, or have been intended to cause, or have been known to be likely to cause, a certain evil effect, omissions which have caused, which have been intended to cause, or which have been known to be likely to cause, the same effect, shall be punishable in the same manner; provided that such omissions were, on other grounds, illegal. An omission is illegal if it be an offence, if it be a breach of some direction of law, or if it be such a wrong as would be a good ground for a civil action.

We cannot defend this rule better than by giving a few illustrations of the way in which it will operate. A omits to give Z food, and by that omission voluntarily causes Z's death. Is this murder? Under our rule it is murder if A was Z's goaler, directed by the law to furnish Z with food. It is murder if Z was the infant child of A, and had therefore a legal right to sustenance, which right a Civil Court would enforce against A. It is murder if Z was a bed-ridden invalid, and A a nurse hired to feed Z: It is murder if A was detaining Z in unlawful confinement, and had thus contracted a legal obligation to furnish Z, during the continuance of the confinement, with necessaries. It is not murder if Z is a beggar who has no other claim on A than that of humanity.

A omits to tell Z that a river is swollen so high that Z cannot safely attempt to ford it, and by this omission voluntarily causes Z's death. This is murder, if A is a peon stationed by authority to warn travellers from attempting to ford the river. It is not murder if A is a guide who had contracted to conduct Z. It is not murder if A is a person on whom Z has no other claim than that of humanity.

The savage dog fastens on Z. A omits to call off the dog, knowing that if the dog be not called off it is likely that Z will be killed. Z is killed. This is a murder in A, if the dog belonged to A, inasmuch as his omission to take proper order with the dog is illegal. But if A be a mere passer-by, it is not murder.

We are sensible that in some of the cases which we have put our rule may appear too lenient. But we do not think that it can be made more severe, without disturbing the whole order of society. It is true that the man who, having abundance of wealth, suf-

REPORT OF THE INDIAN LAW COMMISSIONERS ON OFFENCES AGAINST THE BODY—*contd.*

fers a fellow-creature to die of hunger at his feet, is a bad man—a worse man, probably, than many of those for whom we have provided very severe punishment. But we are unable to see where, if we make such a man legally punishable, we can draw the line. If the rich man who refuses to save a beggar's life at the cost of a little copper is a murderer, is the poor man just one degree above beggary also to be a murderer if he omits to invite the beggar to partake his hard-earned rice? Again, if the rich man is a murderer for refusing to save the beggar's life at the cost of a little copper, is he also to be a murderer if he refuses to save the beggar's life at the cost of a thousand rupees? Suppose A to be fully convinced that nothing can save Z's life, unless Z leave Bengal, and reside a year at the Cape; is A, however wealthy he may be, to be punished as a murderer because he will not, at his own expense, send Z to the Cape? Surely not. Yet it will be difficult to say on what principle we can punish A for not spending an anna to save Z's life, and leave him unpunished for not spending a thousand rupees to save Z's life. The distinction between a legal and an illegal omission is perfectly plain and intelligible. But the distinction between a large and a small sum of money is very far from being so; not to say that a sum which is small to one man is large to another.

The same argument holds good in the case of the ford. It is true that none but a very depraved man would suffer another to be drowned when he might prevent it by a word. But if we punish such a man, where are we to stop? How much exertion are we to require? Is a person to be a murderer if he does not go fifty yards through the sun of Bengal at noon in May in order to caution a traveller against a swollen river? Is he to be a murderer if he does not go a hundred yards?—if he does not go a mile?—if he does not go ten? What is the precise amount of trouble and inconvenience which he is to endure? The distinction between the guide who is bound to conduct the traveller as safely as he can, and a mere stranger, is a clear distinction. But the distinction between a stranger who will not give a halloo to save a man's life, and a stranger who will not run a mile to save a man's life, is very far from being equally clear.

It is, indeed, most highly desirable that men should not merely abstain from doing harm to their neighbours, but should render active services to their neighbours. In general, however, the penal law must content itself with keeping men from doing positive harm, and must leave to public opinion, and to the teachers of morality and religion, the

office of furnishing men with motives for doing positive good. It is evident that to attempt to punish men by law for not rendering to others all the service which it is their duty to render to others would be preposterous. We must grant impunity to the vast majority of those omissions which a benevolent morality would pronounce reprehensible, and must content ourselves with punishing such omissions only when they are distinguished from the rest by some circumstance which marks them out as peculiarly fit objects of penal legislation. Now, no circumstance appears to us so well fitted to be the mark as the circumstance which we have selected. It will generally be found in the most atrocious cases of omission: it will scarcely ever be found in a venial case of omission: and it is more clear and certain than any other mark that has occurred to us. That there are objections to the line which we propose to draw, we have admitted. But there are objections to every line which can be drawn, and some line must be drawn.

The next point to which we wish to call the attention of his Lordship in Council is the unqualified use of the words "to cause death" in the definition of voluntary culpable homicide.

We long considered whether it would be advisable to except from this definition any description of acts or illegal omissions, on the ground that such acts or illegal omissions do not ordinarily cause death, or that they cause death very remotely. We have determined, however, to leave the clause in its present simple and comprehensive form.

There is undoubtedly a great difference between acts which cause death immediately, and acts which cause death remotely; between acts which are almost certain to cause death, and acts which cause death only under very extraordinary circumstances. But that difference, we conceive, is a matter to be considered by the tribunals when estimating the effect of the evidence in a particular case, not by the legislature in framing the general law. It will require strong evidence to prove that an act of a kind which very seldom causes death, or an act which has caused death very remotely, has actually caused death in a particular case. It will require still stronger evidence to prove that such an act was contemplated by the person who did it as likely to cause death. But if it be proved by satisfactory evidence that death has been so caused, and has been caused voluntarily, we see no reason for exempting the person who caused it from the punishment of voluntary culpable homicide.

Mr. Livingston, we observe, excepts from the definition of homicide cases in which

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death is produced by the effect of words on the imagination or the passions. The reasoning of that distinguished jurist has by no means convinced us that the distinction which he makes is well founded. Indeed, there are few parts of his Code which appear to us to have been less happily executed than this. His words are these: "The destruction must be by the act of another. Therefore self-destruction is excluded from the definition. It must be operated by some act. Therefore death, although produced by the operation of words on the imagination or the passions, is not homicide. But if words are used which are calculated to produce, and do produce, some act which is the immediate cause of death, it is homicide. A blind man or a stranger in the dark directed by words only to a precipice where he falls and is killed, a direction verbally given to take a drug that it is known will prove fatal, and which has that effect, are instances of this modification of the rule."

This appears to us altogether incoherent. A verbally directs Z to swallow a poisonous drug. Z swallows it, and dies. And this, says Mr. Livingston, is homicide in A. It certainly ought to be so considered. But how, on Mr. Livingston's principles, it can be so considered, we do not understand. "Homicide," he says, "must be operated by an act." Where, then, is the act in this case? Is it the speaking of A? Clearly not, for Mr. Livingston lays down the doctrine that speaking is not an act. Is it the swallowing by Z? Clearly not, for the destruction of life, according to Mr. Livingston, is not homicide unless it be by the act of another, and this swallowing is an act performed by Z himself.

The reasonable course, in our opinion, is to consider speaking as an act, and to treat A as guilty of voluntary culpable homicide, if by speaking he has voluntarily caused Z's death, whether his words operated circuitously by inducing Z to swallow poison, or directly by throwing Z into convulsions.

There will, indeed, be few homicides of this latter sort. It appears to us that a conviction, or even a trial, in such a case, would be an event of extremely rare occurrence. There would probably not be one such trial in a century. It would be most difficult to prove to the conviction of any Court that that death had really been the effect of excitement produced by words. It would be still more difficult to prove that the person who spoke the words anticipated from them an effect which, except under very peculiar circumstances, and on very peculiar constitutions, no words would produce. Still it seems to us that both these points might be

made out by overwhelming evidence; and supposing them to be so made out, we are unable to perceive any distinction between the case of him who voluntarily causes death in this manner, and the case of him who voluntarily causes death by means of a pistol or a sword. Suppose it to be proved to the entire conviction of a Criminal Court that Z, the deceased, was in a very critical state of health; that A, the heir to Z's property, had been informed by Z's physicians that Z's recovery absolutely depended on his being kept quiet in mind, and that the smallest mental excitement would endanger his life; that A immediately broke into Z's sick room, and told him a dreadful piece of intelligence which was a pure invention; that Z went into fits, and died on the spot; that A had afterwards boasted of having cleared the way for himself to a good property by this artifice. These things being fully proved, no judge could doubt that A had voluntarily caused the death of Z; nor do we perceive any reason for not punishing A in the same manner in which he would have been punished if he had mixed arsenic in Z's medicine.

Again, Mr. Livingston excepts from the definition of homicide the case of a person who dies of a slight wound which, from neglect, or from the application of improper remedies, has proved mortal. We see no reason for excepting such cases from the simple general rule which we propose. It will, indeed, be in general more difficult to prove that death has been caused by a scratch, than by a stab which has reached the heart; and it will, in a still greater degree, be more difficult to prove that a scratch was intended to cause death, than that a stab was intended to cause death. Yet both these points might be fully established. Suppose such a case as the following. It is proved that A inflicted a slight wound on Z, a child who stood between him and a large property. It is proved that the ignorant and superstitious servants about Z applied the most absurd remedies to the wound. It is proved under their treatment the wound mortified, and the child died. Letters from A to a confidant are produced. In those letters, A congratulates himself on his skill, remarks that he could not have inflicted a more severe wound without exposing himself to be punished as a murderer, relates with exultation the mode of treatment followed by the people who have charge of Z, and boasts that he always foresaw that they would turn the slightest incision into a mortal wound. It appears to us that if such evidence were produced, A ought to be punished as a murderer.

Again, suppose that A makes a deliberate attempt to commit assassination. In the

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presence of numbers he aims a knife at the heart of Z. But the knife glances aside, and inflicts only a slight wound. This happened in the case of Jean Chatel, of Damien, of Guiscard, and of many other assassins of the most desperate character. In such cases there is no doubt whatever as to the intention. Suppose that the person who received the wound is under the necessity of exposing himself to a moist atmosphere immediately afterwards, and that, in consequence, he is attacked with tetanus, and dies. Here again, however slight the wound may have been, we are unable to perceive any good reason for not punishing A as a murderer.

We will only add that this provision of the Code of Louisiana appears to us peculiarly ill suited to a country in which, we have reason to fear, neglect and bad treatment are far more common than good medical treatment.

The general rule, therefore, which we propose is, that the question, whether a person has by an act or illegal omission voluntarily caused death, shall be left a question of evidence to be decided by the Courts according to the circumstances of every case.

We propose that all voluntary culpable homicide shall be designated as murder unless it fall under one of three heads. We are desirous to call the particular attention of His Lordship in Council to the law respecting the three mitigated forms of voluntary culpable homicide; and first to the law of manslaughter.

We agree with the great mass of mankind, and with the majority of jurists, ancient and modern, in thinking that homicide committed in the sudden heat of passion, on great provocation, ought to be punished, but that in general it ought not to be punished so severely as murder. It ought to be punished in order to teach men to entertain a peculiar respect for human life: it ought to be punished in order to give men a motive for accustoming themselves to govern their passion; and in some few cases for which we have made provisions, we conceive that it ought to be punished with the utmost rigour.

In general, however, we would not visit homicide committed in violent passion which had been suddenly provoked with the highest penalties of the law. We think that to treat a person guilty of such homicide, as we should treat a murderer, would be a highly inexpedient course—a course which would shock the universal feeling of mankind, and would engage the public sympathy on the side of the delinquent against the law.

His Lordship in Council will remark one important distinction between the law as we have framed it, and some other systems.

Neither the English law, nor the French Code, extends any indulgence to homicide which is the effect of anger excited by words alone. Mr. Livingston goes still further. "No words whatever," says the Code of Louisiana, "are an adequate cause, no gestures merely shewing derision or contempt, no assault or battery so slight as to shew that the intent was not to inflict great bodily harm."

We greatly doubt whether any good reason can be assigned for this distinction. It is an indisputable fact that gross insults by words or gesture have as great a tendency to move many persons to violent passion, as dangerous or painful bodily injuries. Nor does it appear to us that passion excited by insult is entitled to less indulgence than passion excited by pain. On the contrary, the circumstance that a man resents an insult more than a wound is anything but a proof that he is a man of a peculiarly bad heart. It would be a fortunate thing for mankind if every person felt an outrage which left a stain upon his honor more acutely than an outrage which had fractured one of his limbs. If so, why should we treat an offence produced by the blameable excess of a feeling, which all wise legislators desire to encourage, more severely than we treat the blameable excess of feelings certainly not more respectable?

One outrage which wounds only the honor and the affections is admitted by Mr. Livingston to be an adequate provocation. "A discovery of the wife of the accused, in the act of adultery with the person killed, is an adequate cause." The law of France, the law of England, and the Mahomedan law, are also indulgent to homicide committed under such circumstances. We must own that we can see no reason for making a distinction between this provocation and many other provocations of the same kind. We cannot consent to lay it down as an universal rule that in all cases this provocation shall be considered as an adequate provocation. Circumstances may easily be conceived which would satisfy a Court that a husband had in such a case acted from no feeling of wounded honor or affection, but from mere brutality of nature, or from disappointed cupidity. On the other hand, we conceive that there are many cases in which as much indulgence is due to the excited feelings of a father or a brother, as to those of a husband. That a worthless unfaithful, and tyrannical husband should be guilty only of manslaughter for killing the paramour of his wife, and that an affectionate and high-spirited brother should be guilty of murder for killing in a paroxysm of rage the seducer of his sister, appears to us inconsistent and unreasonable.



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There is another class of provocations which Mr. Livingston does not allow to be adequate in law, but which have been, and, while human nature remains unaltered, will be adequate in fact to produce the most tremendous effects. Suppose a person to take indecent liberties with a modest female in the presence of her father, her brother, her husband, or her lover. Such an assault might have no tendency to cause pain or danger; yet history tells us what effects have followed from such assaults. Such an assault produced the Sicilian Vespers. Such an assault called forth the memorable blow of Wat Tyler. It is difficult to conceive any class of cases in which the intemperance of anger ought to be treated with greater lenity. So far, indeed, should we be from ranking a man who acted like Tyler with murderers, that we conceive that a judge would exercise a sound discretion in sentencing such a man to the lowest punishment fixed by the law for manslaughter.

We think it right to add that, though in our remarks on this part of the law we have used illustrations drawn from the history and manners of Europe, the arguments which we have employed apply as strongly to the state of society in India as to the state of society in any part of the globe. There is perhaps no country in which more cruel suffering is inflicted, and more deadly resentment called forth, by injuries which affect only the mental feelings.

A person who should offer a gross insult to the Mahomedan religion in the presence of a zealous professor of that religion, who should deprive some high-born Rajpoot of his caste, who should rudely thrust his head into the covered palanquin of a woman of rank, would probably move those whom he insulted to more violent anger than if he had caused them some severe bodily hurt. That on these subjects our notions and usages differ from theirs is nothing to the purpose. We are legislating for them, and though we may wish that their opinions and feelings may undergo a considerable change, it is our duty, while their opinions and feelings remain unchanged, to pay as much respect to those opinions and feelings as if we partook of them. We are legislating for a country where many men, and those by no means the worst men, prefer death to the loss of caste; where many women, and those by no means the worst women, would consider themselves as dishonored by exposure to the gaze of strangers: and to legislate for such a country as if the loss of caste, or the exposure of a female face, were not provocations of the highest

order, would, in our opinion, be unjust and unreasonable.

The second mitigated form of voluntary culpable homicide is that to which we have given the name of voluntary culpable homicide by consent. It appears to us that this description of homicide ought to be punished, but that it ought not to be punished so severely as murder. We have elsewhere given our reasons for thinking that this description of homicide ought to be punished.

Our reasons for not punishing it so severely as murder are these. In the first place, the motives which prompt men to the commission of this offence are generally far more respectable than those which prompt men to the commission of murder. Sometimes it is the effect of a strong sense of religious duty, sometimes of a strong sense of honor, not unfrequently of humanity. The soldier who, at the entreaty of a wounded comrade, puts that comrade out of pain, the friend who supplies laudanum to a person suffering the torment of a lingering disease, the freedman who in ancient times held out the sword that his master might fall on it, the highborn native of India who stabs the females of his family at their own entreaty in order to save them from the licentiousness of a band of marauders, would, except in Christian societies, scarcely be thought culpable, and even in Christian societies would not be regarded by the public and ought not to be treated by the law as assassins.

Again, this crime is by no means productive of so much evil to the community as murder. One evil ingredient of the utmost importance is altogether wanting to the offence of voluntary culpable homicide by consent. It does not produce general insecurity. It does not spread terror through society. When we punish murder with such signal severity, we have two ends in view. One end is that people may not be murdered. Another end is that people may not live in constant dread of being murdered. This second end is perhaps the more important of the two. For if assassination were left unpunished, the number of persons assassinated would probably bear a very small proportion to the whole population. But the life of every human being would be passed in constant anxiety and alarm. This property of the offence of murder is not found in the offence of voluntary culpable homicide by consent. Every man who has not given his consent to be put to death is perfectly certain that this latter offence cannot at present be committed on him, and that it never will be committed, unless he

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shall first be convinced that it is his interest to consent to it. We know that two or three midnight assassinations are sufficient to keep a city of a million of inhabitants in a state of consternation during several weeks, and to cause every private family to lay in arms and watchmen's rattles. No number of suicides, or of homicides committed with the unextorted consent of the person killed, could possibly produce such alarm among the survivors.

The distinction between murder and voluntary culpable homicide by consent has never, as far as we are aware, been recognized by any Code in the distinct manner in which we propose to recognize it. But it may be traced in the laws of many countries, and often, when neglected by those who have framed the laws, it has had a great effect on the decisions of the tribunals, and particularly on the decisions of tribunals popularly composed. It may be proper to observe that the burning of a Hindoo widow by her own consent, though it is now, as it ought to be, an offence by the Regulations of every Presidency, is in no Presidency punished as murder.

## CULPABLE HOMICIDE AND ABORTION.

The third mitigated form of voluntary culpable homicide is that which we have designated as voluntary culpable homicide in defence.

We have been forced to leave the law on the subject of private defence, as we have elsewhere said, in an unsatisfactory state; and, though we hope and believe that it may be greatly improved, we fear that it must always continue to be one of the least precise parts of every system of jurisprudence. That portion of the law of homicide which we are now considering is closely connected with the law of private defence, and must necessarily partake of the imperfections of the law of private defence. But wherever the limits of the right of private defence may be placed, and with whatever degree of accuracy they may be marked, we are inclined to think that it will always be expedient to make a separation between murder and what we have designated as voluntary culpable homicide in defence.

The chief reason for making this separation is that the law itself invites men to the very verge of the crime which we have designated as voluntary culpable homicide in defence. It prohibits such homicide indeed. But it authorizes acts which lie very near to such homicide. And this circumstance, we think, greatly mitigates the guilt of such homicide.

That a man who deliberately kills another in order to prevent that other from pulling his nose should be allowed to go absolutely unpunished would be most dangerous. The law punishes and ought to punish such killing. But we cannot think that the law ought to punish such killing as murder. For the law itself has encouraged the slayer to inflict on the assailant any harm short of death which may be necessary for the purpose of repelling the outrage—to give the assailant a cut with a knife across the fingers which may render his right hand useless to him for life, or to hurl him downstairs with such force as to break his leg. And it seems difficult to conceive that circumstances which would be a full justification of any violence short of homicide should not be a mitigation of the guilt of homicide. That a man should be merely exercising a right by fracturing the skull and knocking out the eye of an assailant, and should be guilty of the highest crime in the Code if he kills the assailant—that there should be only a single step between perfect innocence and murder, between perfect impunity and liability to capital punishment—seems unreasonable. In a case in which the law itself empowers an individual to inflict any harm short of death, it ought hardly, we think, to visit him with the highest punishment if he inflicts death.

It is to be considered also that the line between those aggressions which it is lawful to repel by killing, and those which it is not lawful so to repel, is in our Code, and must be in every Code, to a great extent an arbitrary line, and that many individual cases will fall on one side of that line which, if we had framed the law with a view to those cases alone, we should place on the other. Thus we allow a man to kill if he has no other means of preventing an incendiary from burning a house; and we do not allow him to kill for the purpose of preventing the commission of a simple theft. But a house may be a wretched heap of mats and thatch, propped by a few bamboos, and not worth altogether twenty rupees. A simple theft may deprive a man of a pocket-book which contains bills to a great amount, the savings of a long and laborious life, the sole dependence of a large family. That in these cases the man who kills the incendiary should be pronounced guiltless of any offence, and that the man who kills the thief should be sentenced to the gallows, or, if he is treated with the utmost lenity which the Courts can shew, to perpetual transportation or imprisonment, would be generally condemned as a shocking injustice. We are therefore clearly of opinion that the offence which we have

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designated as voluntary culpable homicide in defence ought to be distinguished from murder in such a manner that the Courts may have it in their power to inflict a slight or a merely nominal punishment on acts which, though not within the letter of the law which authorizes killing in self-defence, are yet within the reason of that law.

We have hitherto been considering the law of voluntary culpable homicide. But homicide may be culpable, yet not voluntary. There will probably be little difference of opinion as to the expediency of providing a punishment for the rash and negligent causing of death. But it may be thought that we have dealt too leniently by the offender who, while committing a crime, causes death which he did not intend to cause or know himself to be likely to cause.

The law as we have framed it differs widely from the English law. "If," says Sir William Blackstone, "one intends to do another felony, and undesignedly kills a man, this is murder:" and he gives the following illustration of the rule: "If one gives a woman with child a medicine to produce abortion, and it operates so violently as to kill the woman, this is murder in the person who gave it."

Under the provisions of our Code, this case would be very differently dealt with according to circumstances. If A kills Z by administering abortives to her with the knowledge that those abortives are likely to cause her death, he is guilty of voluntary culpable homicide, which will be voluntary culpable homicide by consent if Z agreed to run the risk, and murder if Z did not so agree. If A causes miscarriage to Z, not intending to cause Z's death, not thinking it likely that he shall cause Z's death, but so rashly or negligently as to cause her death, A is guilty of culpable homicide not voluntary, and will be liable to the punishment provided for the causing of miscarriage, increased by imprisonment for a term not exceeding two years. Lastly, if A took such precautions that there was no reasonable probability that Z's death would be caused, and if the medicine were rendered deadly by some accident which no human sagacity could have foreseen, or by some peculiarity in Z's constitution such as there was no ground whatever to expect, A will be liable to no punishment whatever on account of her death, but will, of course, be liable to the punishment provided for causing miscarriage.

It may be proper for us to offer some arguments in defence of this part of the Code.

It will be admitted that, when an act is in itself innocent, to punish the person who does it because bad consequences which no

human wisdom could have foreseen have followed from it, would be in the highest degree barbarous and absurd.

A pilot is navigating the Hooghly with the utmost care and skill: he directs the vessel against a sand bank which has been recently formed, and of which the existence was altogether unknown till this disaster. Several of his passengers are consequently drowned. To hang the pilot as a murderer on account of this misfortune would be universally allowed to be an act of atrocious injustice. But if the voyage of the pilot be itself a high offence, ought that circumstance alone to turn his misfortune into a murder? Suppose that he is engaged in conveying an offender beyond the reach of justice, that he has kidnapped some natives, and is carrying them to a ship which is to convey them to some foreign slave-colony, that he is violating the laws of quarantine at a time when it is of the highest importance that those laws should be strictly observed, that he is carrying supplies, deserters, and intelligence to the enemies of the State. The offence of such a pilot ought undoubtedly to be severely punished. But to pronounce him guilty of one offence because a misfortune befel him while he was committing another offence—to pronounce him the murderer of people whose lives he never meant to endanger, whom he was doing his best to carry safe to their destination, and whose death has been purely accidental—is surely to confound all the boundaries of crime.

Again, A heaps fuel on a fire not in an imprudent manner, but in such a manner that the chance of harm is not worth considering. Unhappily, the flame bursts out more violently than there was reason to expect. At the same moment a sudden puff of wind blows Z's light dress towards the hearth. The dress catches fire, and Z is burned to death. To punish A as a murderer on account of such an unhappy event would be senseless cruelty. But suppose that the fuel which caused the flame to burst forth was a will, which A was fraudulently destroying. Ought this circumstance to make A the murderer of Z? We think not. For the fraudulent destroying of wills we have provided in other parts of the Code punishments which we think sufficient. If not sufficient, they ought to be made so. But we cannot admit that Z's death has, in the smallest degree, aggravated A's offence, or ought to be considered in apportioning A's punishment.

To punish as a murderer every man who, while committing a heinous offence, causes death by pure misadventure, is a course which evidently adds nothing to the security

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of human life. No man can so conduct himself as to make it absolutely certain that he shall not be so unfortunate as to cause the death of a fellow-creature. The utmost that he can do is to abstain from every thing which is at all likely to cause death. No fear of punishment can make him do more than this: and therefore to punish a man who has done this can add nothing to the security of human life. The only good effect which such punishment can produce will be to deter people from committing any of those offences which turn into murders what are in themselves mere accidents. It is in fact an addition to the punishment of those offences, and it is an addition made in the very worst way. For example, hundreds of persons in some great cities are in the habit of picking pockets. They know that they are guilty of a great offence. But it has never occurred to one of them, nor would it occur to any rational man, that they are guilty of an offence which endangers life. Unhappily one of these hundreds attempts to take the purse of a gentleman who has a loaded pistol in his pocket. The thief touches the trigger: the pistol goes off: the gentleman is shot dead. To treat the case of this pick-pocket differently from that of the numerous pick-pockets who steal under exactly the same circumstances, with exactly the same intentions, with no less risk of causing death, with no greater care to void a causing death—to send them to the house of correction as thieves, and him to the gallows as a murderer—appears to us an unreasonable course. If the punishment for stealing from the person be too light, let it be increased, and let the increase fall alike on all the offenders. Surely the worst mode of increasing the punishment of an offence is to provide that, besides the ordinary punishment, every offender shall run an exceedingly small risk of being hanged. The more nearly the amount of punishment can be reduced to a certainty, the better. But if chance is to be admitted, there are better ways of admitting it. It would be a less capricious, and therefore a more salutary, course, to provide that every fiftieth or every hundredth thief selected by lot should be hanged, than to provide that every thief should be hanged who, while engaged in stealing, should meet with an unforeseen misfortune such as might have befallen the most virtuous man while performing the most virtuous action.

We trust that His Lordship in Council will think that we have judged correctly in proposing that when a person engaged in the commission of an offence causes death by pure accident, he shall suffer only the punish-

ment of his offence without any addition on account of such accidental death.

When a person engaged in the commission of an offence causes death by rashness or negligence, but without either intending to cause death, or thinking it likely that he shall cause death, we propose that he shall be liable to the punishment of the offence which he was engaged in committing, super-added to the ordinary punishment of involuntary culpable homicide.

The arguments and illustrations which we have employed for the purpose of shewing that the involuntary causing of death without either rashness or negligence ought, under no circumstances, to be punished at all, will, with some modifications which will readily suggest themselves, serve to shew that the involuntary causing of death by rashness or negligence, though always punishable, ought, under no circumstances, to be punished as murder.

It gives us great pleasure to observe that Mr. Livingston's provisions on this subject, though in details they differ widely from ours, are framed on the principles which we have here defended.

We wish next to call the attention of his Lordship in Council to clauses 308 and 309.

These clauses appear to us absolutely necessary to the completeness of the Code. We have provided, under the head of bodily hurt, for cases in which hurt is inflicted in an attempt to murder; under the head of assaults, for assaults committed in attempting to murder; under the head of criminal trespasses, for some criminal trespasses committed in order to murder. But there will still remain many atrocious and deliberate attempts to murder which are not trespasses, which are not assaults, and which cause no hurt. A, for example, digs a pit in his garden, and conceals the mouth of it, intending that Z may fall in, and perish there. Here A has committed no trespass, for the ground is his own; and no assault, for he has applied no force to Z. He may not have caused bodily hurt, for Z may have received a timely caution, or may not have gone near the pit. But A's crime is evidently one which ought to be punished as severely as if he had laid hands on Z with the intention of cutting his throat.

Again, A sets poisoned food before Z. Here A may have committed no trespass; for the food may be his own; and, if so, he violates no right of property by mixing arsenic with it. He commits no assault, for he means the taking of the food to be Z's voluntary act. If Z does not swallow enough of the poisoned food to disorder him, A causes no bodily

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hurt. Yet it is plain that A has been guilty of a crime of a most atrocious description.

Similar attempts may be made to commit voluntary culpable homicide in any of the three mitigated forms. A, for example, is excited to violent passion by Z, and fires a pistol intending to kill Z. If the shot proves fatal, A will be guilty of man-slaughter; and he surely ought not to be exempted from all punishment if the ball only grazes the intended victim.

It is to meet cases of this description that clauses 308 and 309 are intended.

With respect to the law on the subject of abortion, we think it necessary to say only that we entertain strong apprehensions that this or any other law on that subject may, in this country, be abused to the vilest purposes. The charge of abortion is one which,

even where it is not substantiated, often leaves a stain on the honor of families. The power of bringing a false accusation of this description is, therefore, a formidable engine in the hands of unprincipled men. This part of the law will, unless great care may be taken, produce few convictions, but much misery and terror to respectable families, and a large harvest of profit to the vilest pests of society. We trust that it may be in our power in the Code of Procedure to lay down rules which may prevent such an abuse. Should we not be able to do so, we are inclined to think that it would be our duty to advise His Lordship in Council rather to suffer abortion, where the mother is a party to the offence, to remain wholly unpunished, than to repress it by provisions which would occasion more suffering to the innocent than to the guilty.

**299.** Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

*Illustrations.*

(a.) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in, and is killed. A has committed the offence of culpable homicide.

(b.) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause, Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c.) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

*Explanation 1.*—A person who causes bodily injury to another, who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

*Explanation 2.*—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

*Explanation 3.*—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

**300.** Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

*2ndly*, if it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

*3rdly*, if it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient, in the ordinary course of nature, to cause death, or—

*4thly*, if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

#### *Illustrations.*

(a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not, in the ordinary course of nature, kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death, or such bodily injury as, in the ordinary course of nature, would cause death.

(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons, and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

*Exception 1.*—Culpable homicide is not murder if the offender, whilst When culpable homicide is deprived of the power of self-control by grave and not murder. sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos :—

*First.*—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

*Secondly.*—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

*Thirdly.*—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

*Explanation.*—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

#### *Illustrations.*

(a.) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(b.) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(c.) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(d.) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(e.) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(f.) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

*Exception 2.*—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

*Illustration.*

Z attempts to horse-whip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A, believing in good faith that he can by no other means prevent himself from being horse-whipped, shoots Z dead. A has not committed murder, but only culpable homicide.

*Exception 3.*—Culpable homicide is not murder if the offender, being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

*Exception 4.*—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel, and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

*Explanation.*—It is immaterial in such cases which party offers the provocation or commits the first assault.

*Exception 5.*—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death, with his own consent.

*Illustration.*

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death. A has therefore abetted murder.

**301.** If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of the person whose death he intended or knew himself to be likely to cause.

**302.** Whoever commits murder shall be punished with death or transportation for life, and shall also be liable to fine.

Punishment for murder.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**CHARGE.**—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under s. 302 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (II.).

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 302 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

If the act by which death is caused does not in itself constitute the crime of murder, it does not constitute murder because it is coupled with dacoity.—Queen v. Ramchunder Chung, 1 Ind. Jur., O. S., 108. [Steer, Seton-Karr, and Jackson, JJ. Nov. 17, 1862.]

WHERE the intention of causing death was not sufficiently established, a sentence of death was commuted to transportation for life.—Queen v. Shobha Sheikh Gorman, W. R. Sp. 2. [Loch and Steer, JJ. Jan. 27, 1864.]

THERE can be no conviction for abetment of murder without proof of murder.—Queen v. Askur and another, W. R. Sp. 12. [Steer and Seton-Karr, JJ. Feb. 22, 1864.]

IN a case of murder committed in a drunken squabble, it was held that voluntary drunkenness, though it did not palliate any offence, may be taken into account as throwing light upon the question of intention.—Queen v. Ram Sahoy Bhur and others, W. R. Sp. 24. [Steer and Glover, JJ. April 29, 1864.]

S. 380 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with ss. 306 and 367 of the new Code of Criminal Procedure (Act X. of 1882), does not authorize a Sessions Judge to sentence a prisoner convicted of murder to anything less than transportation for life, but only requires the Judge, if he sentence such prisoner to transportation for life instead of capitally, to assign his reasons for so doing. If there are circumstances which render expedient or advisable a mitigation of the sentence required by the law to be passed in such cases, the Judge may record those circumstances and submit them for the consideration of the Government, and the Government may, under s. 54 of Act XXV. of 1861 (corresponding with s. 401 of Act X. of 1882), act as to it seems proper.—Queen v. Dabee and others, W. R. Sp. 27. [Loch and Glover, JJ. May 2, 1864.]

If a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 396 of the Penal Code, but he cannot be separately convicted of murder under s. 302, and of committing dacoity under s. 395. Where the law gives the alternative punishments of death, transportation for life, and rigorous imprisonment extending to ten years, a sentence of fourteen years' transportation is illegal. If the Judge thinks it proper to pass a sentence of transportation short of life, he should pass a sentence of imprisonment for the term fixed by law, and then, under s. 59, change it to transportation for that period.—Queen v. Rughoo and others, W. R. Sp. 30. [Loch and Jackson, JJ. May 3, 1864.]

IN order to convict a person of murder arising out of grievous hurt, it is indispensable that the death should be clearly and directly connected with the act of violence.—Queen v. Muhomed Hossein, W. R. Sp. 31. [Seton-Karr and Glover, JJ. May 12, 1864.]

A CONVICTION for murder was held to be wrong in a case where a prisoner, taking advantage of an incident which occurred in what till then had been a fair fight, struck his opponent, and knocked him over.—Queen v. Kewul Dosad, W. R. Sp. 36. [Seton-Karr and Campbell, JJ. June 19, 1864.]



COURSE to be pursued by Sessions Judges in the case of apparently insane persons charged with murder. [See the procedure prescribed in s. 465 *et seq.* of Act X. of 1882.—Ed.]—Queen v. Sheikh Mustafu, 1 W. R. 1. [Loch and Seton-Karr, JJ. Aug. 1, 1864.]

A MAN and a dog died a few hours after eating the same food, but no traces of poison were found in their bodies or in the possession of the accused. The mode of investigation by the police and by the Magistrates in such cases fully laid down.—Chuttoo Chamar, Appellant, 1 W. R. 3. [Campbell and Glover, JJ. Aug. 9, 1864.]

THE prisoner was convicted of murder by the Sessions Judge, and sentenced to death, subject to confirmation by the High Court. The High Court directed the Sessions Judge to take any evidence that might be forthcoming to prove the alleged confession before the Magistrate, which, as recorded, was inadmissible, not being taken as prescribed in s. 205 of the Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 364 of the new Code of Criminal Procedure (Act X. of 1882), and to certify the result of such inquiry and evidence to that Court. Evidence of the confession having been taken by the Sessions Judge, and certified as directed, the High Court confirmed the conviction and the sentence of death.—Reg. v. Ganu Bapu, 2 Bom. H. C. R. 398. [Arnould, Acting C.J., Newton and Janardan, JJ. Aug. 18, 1864.]

THE two prisoners having confessed that, having caught the deceased in the act of having sexual intercourse with the wife of one of them, they then and there killed him, held that the very grave provocation given to them was such as to reduce their crime from murder to culpable homicide not amounting to murder.—Queen v. Gour Chunder Polie and another, 1 W. R. 17. [Kemp and Glover, JJ. Sep. 26, 1864.]

AN unpremeditated assault (ending in an affray in which death is caused), committed in the heat of passion, upon a sudden quarrel, it being immaterial which party offered the provocation or committed the first assault, was held to come within excep. 4 of s. 300 of the Penal Code.—Queen v. Zalim Bai and others, 1 W. R. 33. [Kemp and Glover, JJ. Nov. 25, 1864.]

A JUDGE can alter or amend a charge at any stage of the trial. The subject of an Independent State, though not amenable to the British Courts on a charge of culpable homicide committed out of British territories, may be so amenable on a charge of kidnapping from those territories.—Queen v. Dhurmonarain Moitro and others, 1 W. R. 39. [Kemp and Glover, JJ. Dec. 9, 1864.]

IN a case of murder, after the finding and discharge of the assessors, the Judge altered the charge to culpable homicide not amounting to murder, and convicted the accused on that charge. Held that the conviction was illegal.—Queen v. Dyee Bhola, 1 W. R. 40. [Kemp and Glover, JJ. Dec. 9, 1864.]

A CAPITAL sentence mitigated in the case of murder committed while under the influence of provocation caused by an intrigue with the wife of the prisoner.—Queen v. Blekye *alias* Sheik Anser, 1 W. R. 46. [Kemp and Glover, JJ. Dec. 19, 1864.]

THOUGH the evidence was held to be sufficient to convict the accused of murder, yet as the evidence gave rise to doubts as to the precise part taken by the prisoner, it was thought safer to remit the capital sentence, and pass one of transportation for life.—Queen v. Baboo Lall Jhah, 1 W. R. 48. [Kemp and Glover, JJ. Dec. 26, 1864.]

WHEN two persons take an active part in a murder, they become principals in the first degree, though one of them only may have been the actual killer. If one stood by whilst the crime was being committed, he would be an abettor.—Queen v. Jan Mahomed and another, 1 W. R. 49. [Kemp and Glover, JJ. Dec. 26, 1864.]

THE conviction of a police-inspector for having abetted the bringing of a false charge of murder was quashed, because it was not distinctly shown that he preferred the charge *malá fide*.—Queen v. Muthoorapershad Panday, 2 W. R. 10. [Kemp and Glover, JJ. Jan. 18, 1865.]

THE prisoner was convicted of murder, and sentenced to death. But, before confirming the sentence, as doubts were entertained of her sanity, the case was referred to the Sessions Judge with instructions for further inquiry.—Queen v. Arzao Bebee, 2 W. R. 33. [Kemp and Glover, JJ. Feb. 4, 1865.]

WHEN murder is committed in the commission of a dacoity, every one of the persons concerned in the dacoity is liable to be punished with death.—Queen v. Ruchee Ahen, 2 W. R. 39. [Kemp and Glover, JJ. Mar. 6, 1865.]

THE case of a prisoner who, after having committed dacoity attended with murder, absconded to Bhootan. On the annexation of the Bhootan Dooars by the British Government, he was arrested, and, after conviction, was sentenced to transportation for life.—Queen v. Roopa, 2 W. R. 49. [Glover, J. Mar. 21, 1865.]

DISCUSSION as to the sufficiency of the evidence in a case of murder, and the necessity of applying to Government for a pardon on behalf of the prisoner.—Queen v. Gobind Bagdee, 3 W. R. 1. [Jackson and Glover, JJ. April 24, 1865.]

CASE of conviction of murder on the confession of the accused, together with evidence as to his conduct, both before and after the murder.—Queen v. Peter Ram Thappa, 3 W. R. 11. [Jackson and Glover, JJ. May 11, 1865.]

WHAT is necessary to bring a case of murder under the 4th excep. to s. 300 of the Penal Code, so as to change the offence into culpable homicide not amounting to murder.—Queen v. Akal Mahomed, 3 W. R. 18. [Jackson and Glover, JJ. May 23, 1865.]

A is guilty of murder if he several times kicks B, who, after having been severely beaten, has fallen down senseless; as A must have known that such kicks were likely to cause death in B's state at that time.—Queen v. Nilmadhub Sircar and others, 3 W. R. 22. [Jackson and Glover, JJ. June 2, 1865.]

PRISONER acquitted of attempt to murder, but directed to be proceeded with by the Magistrate under s. 297 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 110 of the new Code of Criminal Procedure (Act X. of 1882), with a view to security being taken for his future peaceable behaviour.—Queen v. Beharee alias Kur-reem Bux, 3 W. R. 23. [Jackson and Glover, JJ. June 3, 1865.]

SENTENCE of transportation for life in a case of murder instead of capital punishment, there being some reason to suppose that at the time of the murder both the deceased and the prisoners were drunk, and that the murdered man excited the prisoner's passion by calling him a thief.—Queen v. Ram Nath Gwala, 3 W. R. 27. [Campbell, Jackson, and Glover, JJ. June 11, 1865.]

THE Sessions Judge having found the prisoners guilty of striking the deceased with the knowledge that the act was likely to cause death—in other words, guilty of murder—convicted and punished them for culpable homicide not amounting to murder. Case remanded for a new trial (Jackson, J., dissenting).—Queen v. Beria Bazikur and another, 3 W. R. 38. [Kemp, Jackson, and Glover, JJ. July 6, 1865.]

THE absence of premeditation will not reduce the crime from murder to culpable homicide not amounting to murder.—Queen v. Mahomed Elim and others, 3 W. R. 40. [Kemp and Glover, JJ. July 7, 1865.]

WHEN prisoners confess in the most circumstantial manner to having committed a murder, the finding of the body is not absolutely essential to a conviction.—Queen v. Petta Gazi and others, 4 W. R. 19. [Glover, J. Oct. 26, 1865.]

THE offences of murder and of culpable homicide not amounting to murder, each supposes an intention or knowledge of likelihood of the causing death. In the absence of such intention or knowledge, the offence committed may be the offence of causing grievous hurt.—Queen v. Bhadoo Poramanick, 4 W. R. 23. [Loch and Glover, JJ. Nov. 10, 1865.]

HELD by the majority that, where two members of an unlawful assembly use spears, and deliberately pierce another man through the chest and abdomen, with the knowledge that death is likely to ensue, although without proof of any intention to cause death, all the members of the unlawful assembly are jointly guilty of murder.—Queen v. Nazoo Fakir and others, 4 W. R. 26. [Kemp, Seton-Karr, and Campbell, JJ. Nov. 27, 1865.]

WHEN the *corpus delicti* is not established, there can be no conviction for culpable homicide not amounting to murder, nor for intentional omission to give notice of an offence which has not been proved to have been committed.—Queen v. Ram Ruchea Singh, 4 W. R. 29. [Kemp and Seton-Karr, JJ. Nov. 28, 1865.]

INTRIGUING with a sister is sufficient grave provocation to justify a conviction of culpable homicide not amounting to murder as against the brothers who, finding the deceased lying with their sister in the same bed, ill-treated him, from the effects of which ill-treatment he died.—Queen v. Kasseemuddeen and others, 4 W. R. 38. [Kemp, J. Dec. 2, 1865.]

THE Judge having convicted the prisoners of culpable homicide not amounting to murder, after having found that the act by which death was caused was undoubtedly done with the intention of causing such bodily injury as was likely to cause death, the conviction was quashed as illegal, because inconsistent with the finding, and a new trial ordered.—*Queen v. Soumber Gwala and others*, 4 W. R. 32. [Kemp and Seton-Karr, JJ. Dec. 5, 1865.]

HELD by the majority that, when four men beat another at intervals, and so severely that death ensues from the injury received, they must be presumed to have known that by such acts they were likely to cause death; that, moreover, when these acts were done when there was no grave or sudden provocation, or no sudden fight or quarrel, the offence which they have committed is murder; and that the offence of murder is not reduced to culpable homicide not amounting to murder, by the absence of intention to cause death.—*Queen v. Pooshoov and another*, 4 W. R. 33. [Kemp, Seton-Karr, and Jackson, JJ. Dec. 14, 1865.]

HELD by the majority (Campbell J., dissenting) that, if a man strikes another on the head with a stick when he is asleep, and fractures his skull, knowledge of likelihood of causing death must be presumed; and that, if none of the exceptions under s. 300 of the Penal Code are pleaded or probable, the offence committed is murder.—*Queen v. Sheikh Choollye*, 4 W. R. 35. [Kemp, Jackson, and Campbell, JJ. Dec. 16, 1865.]

A JUDGE should clearly acquit a prisoner of murder when so charged, instead of merely finding him guilty of culpable homicide not amounting to murder. When a Judge acquits a prisoner of murder, the High Court cannot, either as a Court of Appeal or as a Court of Revision, find that, according to the evidence, the prisoner caused death with the knowledge mentioned in cl. 4, s. 300 of the Penal Code; nor can the High Court, however wrong it may think the Judge to have been in acquitting of murder, or however inadequate it may think the sentence to be, correct the error, or enhance the sentence.—*Queen v. Toyab Sheikh*, 5 W. R. 2; 1 Ind. Jur. N. S. 58, 87. [Peacock, C.J., and Kemp and Seton-Karr, JJ. Jan. 12, 1866.]

WHERE a man of full age (*i.e.*, above 18 years) submits himself to emasculation, performed neither by skilful hand, nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of culpable homicide not amounting to murder.—*Queen v. Baboolun Hijrah and others*, 5 W. R. 7. [Norman and Campbell, JJ. Jan. 15, 1866.]

THE punishment of death should not be inflicted in a case where there was no intention to cause death, but merely a reckless assault with a deadly weapon, which inflicted a bodily injury likely in the ordinary course of nature to cause death.—*Queen v. Khoza Sheikh*, 5 W. R. 20. [Campbell and Macpherson, JJ. Jan. 27, 1866.]

IT is not murder, if a person kills another without intending to take his life, and if the acts done are not such as conclusively indicate an intention to cause such injury as was likely to cause death. In a referred case, and not an appeal, if the High Court deems a conviction wrong, the only course open to it is to annul the conviction and order a new trial for the proper offence.—*Queen v. Sheikh Solim and others*, 5 W. R. 41. [Seton-Karr and Macpherson, JJ. Feb. 8, 1866.]

UNDER the Penal Code no constructive, but an actual, intention to cause death is required to constitute murder. Thus, where a lad of 15 years, in the heat of discovery of the deceased in the act of adultery with a near relative's wife, and without the use of any lethal or other weapon, joined the relative in committing an assault on the deceased, who died from the effects thereof, held that the offence committed was culpable homicide not amounting to murder.—*Queen v. Gureeboollah*, 5 W. R. 42. [Norman and Campbell, JJ. Feb. 12, 1866.]

WHERE a Judge acquits a prisoner of intention to kill, but admits that the prisoner struck the deceased with a highly lethal weapon, with the knowledge that the act was such as was likely to cause death, the conviction should be for murder, and not culpable homicide not amounting to murder. The failure of the Judge to convict the prisoner on the graver charge is not an error of law with which the High Court can interfere under its revising powers.—*Queen v. Sobee Mahee*, 5 W. R. 32. [Glover, J. Feb. 22, 1866.]

HELD by the majority of the Court that the offence committed was murder where the death of a weak half-starved old woman, who was detected stealing, was caused in the exercise of the right of private defence, by the doing of more harm than was necessary for the purpose of such defence; Campbell J., *contra*, being of opinion that a man who detects a thief stealing his property, and who, acting on the sudden impulse of the moment,

inflicts on the thief blows so severe as to be likely to cause death, but which he did not at the time know or feel to be likely to cause death, and which would not necessarily have caused death to a person in ordinary health, but which, owing to abnormal weakness in the deceased not known to him, did cause death, is not guilty of murder, but of culpable homicide not amounting to murder.—*Queen v. Gokool Bowree and others*, 5 W. R. 38. [Norman, Campbell, and Phear, JJ. Feb. 26, 1866.]

UNDER s. 404 of the Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 439 of the new Code of Criminal Procedure (Act X. of 1882), the High Court may set aside a judgment of acquittal for error in law. The High Court, as a Court of Revision, has power to enhance a punishment. The High Court may send the case back to the Court of Session with an order to pass the proper sentence. The High Court may act as a Court of Revision after it has acted as a Court of Appeal in order to correct an error which cannot be set right by appeal. Culpable homicide and murder distinguished.—*Queen v. Gorachand Gope*, B. L. R. Sup. Vol. 443; 5 W. R. 45; 1 Ind. Jur. N. S. 177. [Peacock, C.J., and Trevor, Norman, Campbell, Jackson, and Glover, JJ. Mar. 3, 1866.]

INTOXICATION is no excuse for a man throttling to death another, and a weaker man, who was intoxicated also. The assessors having brought the case within excep. 4 of s. 300 of the Penal Code without any good evidence or substantial grounds, the Sessions Judge was held to have correctly overruled their verdict, and found the prisoner guilty of murder.—*Queen v. Akulputtee Gossain*, 5 W. R. 58. [Seton-Karr, J. Mar. 26, 1866.]

PRISONER found deceased in the act of house-breaking by night in his house, and killed him with a kodali, which he had called for, as he admitted, for that purpose. He was convicted of murder, and sentenced to death by the Sessions Judge. The sentence being referred to the High Court for confirmation, it was held that the prisoner had been legally convicted of murder, that he had intentionally done to the deceased more harm than was necessary for any purpose of defence, and that not whilst deprived of the power of self-control. But the sentence was mitigated to transportation for life, than which, it was held, no less sentence could be legally passed. The Judge, however, in a letter to Government, suggested the mitigation of the punishment, which was accordingly reduced to imprisonment for six months.—*Queen v. Durwan Geer*, 5 W. R. 73; 1 Ind. Jur., N. S., 253. [Jackson, Campbell, and Macpherson, JJ. April 7, 1866.]

THE prisoners having abetted an assault, and murder having been committed, held under the peculiar circumstances of the case that they were guilty of abetment of grievous hurt, and not abetment of murder.—*Queen v. Goluck Chung and others*, 5 W. R. 75. [Campbell and Macpherson, JJ. April 28, 1866.]

A PERSON who beats another brutally and continuously, so that the back of the victim is reduced to a state of pulp, and yet studiously avoids breaking a bone (the very fact of his taking such a precaution evincing deliberation), is guilty of murder or culpable homicide not amounting to murder, according as there may or may not have been grave provocation.—*Queen v. Toprah Fukeer and others*, 5 W. R. 78. [Kemp and Glover, JJ. May 9, 1866.]

HELD in a case of murder that the Judge had not given a proper direction to the jury in telling them that it was for them to consider whether the evidence of the accomplice was strictly corroborated as to the prisoners; that it was not enough that the evidence should disclose a state of facts consistent with the possibility of the truth of the accomplice's story; and that the Judge ought to have gone through the history of the crime as detailed by the accomplice to point out any independent evidence proving facts showing that the prisoners were, or must have been, present at, or cognizant of, the murder.—*Queen v. Karoo and another*, 6 W. R. 44. [Norman and Campbell, JJ. July 24, 1866.]

THE sentence of death reduced to transportation for life in a case of murder committed rather by way of retaliation for injury than under the influence of any worse passion.—*Queen v. Tonoo and others*, 6 W. R. 46. [Kemp and Markby, JJ. July 26, 1866.]

IN a case of murder by consent, held that evidence of consent, which would be sufficient in a civil transaction, must be equally sufficient in exculpation of a prisoner's guilt.—*Queen v. Anunto Burnagat*, 6 W. R. 57. [Kemp and Markby, JJ. Aug. 25, 1866.]

A PERSON may be convicted of murder on his own confession. Where a master accompanies a servant, knowing the latter's intention to commit murder, and is present at the commission of the murder, although he struck no blow, still he is guilty as a principal, the only reasonable presumption being that both were acting with a common intent.—*Queen v. Hyder Jolaha*, 6 W. R. 83. [Kemp and Markby, JJ. Sep 21, 1866.]

A SENTENCE of death was commuted into one of transportation for life in a case of a prisoner who committed murder in the belief that the deceased was a wizard and the cause of his child's illness, and that, by killing the deceased, the child's life might be saved.—Queen v. Ooram Sungra, 6 W. R. 82. [Kemp and Markby, JJ. Oct. 5, 1866.]

A SENTENCE of transportation, other than *for life*, is illegal in the case of a prisoner convicted of murder.—Queen v. Bhootoo Mullick, 6 W. R. 85. [Loch and Macpherson, JJ. Nov. 27, 1866.]

HEAVY sentences reduced by the Chief Court to terms of imprisonment for two and three years, where death was caused on provocation in a sudden fight, no unfair advantage being taken on the deceased.—Crown v. Ameera, Panj. Rec., No. 12 of 1866; and Kesur Singh v. Crown, Panj. Rec., No. 13 of 1866.

ATTEMPT at murder must not be confounded with causing grievous hurt with dangerous weapons.—Gholam Russool v. Crown, Panj. Rec., No. 32 of 1866.

SENTENCE of confiscation of property in a case of murder annulled, as the accused had a mother and young children.—Crown v. Sunt Singh, Panj. Rec., No. 35 of 1866.

THOUGH voluntary drunkenness cannot excuse the commission of an offence, yet where, as upon a charge of murder, the question is whether the act was premeditated or done only from sudden heat or impulse, the fact of the party being intoxicated was held to be a circumstance proper to be taken into consideration.—Crown v. Boodh Dass, Panj. Rec., No. 41 of 1866.

ACCUSED, a police-constable, in the course of an inquiry into a theft-case, violently beat deceased, who died about nine days afterwards from the effects of the beating. *Held* that a conviction for culpable homicide could not be sustained, as there was nothing to show that the beating was likely, to the knowledge of the prisoner, to cause death. Conviction altered to one under s. 330, Penal Code. Sentence, seven years' imprisonment and Rs. 200 fine.—Meeah Mahomed v. Crown, Panj. Rec. No. 86 of 1866.

PRISONER was charged with murdering his wife. She had eloped from her husband, and, on his bringing her back, she was sulky and obstinate, refused to cook his food, or to eat and cohabit with him. Provoked by this, he struck her a violent blow with an axe, which killed her. *Held* that the offence was culpable homicide. Fourteen years' transportation.—Fuzl Shah v. Crown, Panj. Rec. No. 87 of 1866.

BY his own confession and the other evidence, prisoner killed with a hatchet Mussamat Almo, his sister, and Choochur, having found them sleeping together at Choochur's cattle-enclosure. The accused, on information received, had gone in search of her and Choochur, expecting to find them together. He had gone armed with a hatchet, but he stated in his defence that he lost control over himself on finding them together, and so killed them both. *Held*, with regard to the punishment, that the injury to the feelings of the accused, though hardly to be deemed sudden or unexpected, considering that he had himself gone to the spot expecting to find Almo, as in fact he found her, was great. Nor was the absence of sufficient sudden provocation inconsistent with the absence of premeditation, for murder may result from the reckless anger of the moment. Moreover, in this case the existence of premeditation was not necessarily to be inferred from the prisoner's conduct. Once before there had been violence on such an occasion, and the prisoner's taking the hatchet was open to the doubt that he might have thought proper to do so without designing murder at the time of setting out. Sentence of death commuted.—Crown v. Mahomed, Panj. Rec., No. 107 of 1866.

IN a case of murder, where a man was struck on the head in a boat with a heavy paddle, and knocked overboard in a large river in the height of the rains, and never been heard of since, it was *held* impossible to suppose that the man was still alive.—Queen v. Poorusoolah Sikhdar, 7 W. R. 14. [Norman, J. Jan. 21, 1867.]

WHERE a man suddenly cut his wife's throat, it was *held* that, in order to establish that the act was not done under grave provocation so as to bring the case under excep. 1 of s. 300 of the Penal Code, it is not sufficient to state that the deceased ceased abusing the prisoner then, but it is necessary to show what interval elapsed between the time when the deceased ceased to speak and the instant when the prisoner attacked her.—Queen v. Nokul Nushyo, 7 W. R. 27. [Norman and Seton-Karr, JJ. Feb. 4, 1867.]

JUDGES must not shrink from doing their duty, and they are bound to pass a capital sentence in a case of murder when they believe the evidence.—Queen v. Sibnarain Palodhee and another, 7 W. R. 33. [Seton-Karr, J. Feb. 18, 1867.]

WHERE a prisoner, convicted of murder against the opinion of assessors, was sentenced to transportation for life, the High Court reduced the sentence to ten years' rigorous imprisonment, remarking on the severity of the Penal Code, and on the necessity of administering it so as to make it apply to the various gradations and degrees of crime in this country.—*Queen v. Hossein Ally*, 7 W. R. 47. [Seton-Karr and Shumboonath Pun-dit, JJ. Mar. 19, 1867.]

PROOF of motive or previous ill-will is not necessary to sustain a conviction for murder in a case where a person is coolly and barbarously put to death.—*Queen v. Jaichand Mundle and others*, 7 W. R. 60. [Seton-Karr, J. April 29, 1867.]

CRIMINAL case of murder, where a father sacrificed his son, because wealth had not accompanied its birth, and afterwards cut his own throat as a protest against his deity's injustice.—*Queen v. Bishendharce Khara*, 7 W. R. 64. [Glover and Hobhouse, JJ. May 7, 1867.]

WHERE a quiet peaceful man suddenly, and without the least motive or provocation, runs a-muck against all around him, his case is different from an ordinary case of deliberate murder deserving of the extreme penalty.—*Queen v. Bishonath Bunneca*, 8 W. R. 63. [Kemp and Glover, JJ. July 29, 1867.]

TWO parties met each other in a drunken state, and commenced a quarrel, during which they became grossly abusive to each other. This lasted for about half an hour, when one of them ran to his own house, distant 30 yards from the spot, and came back with a heavy pestle, with which he struck the other a violent blow on the left temple, as the latter was rising, or had just risen, from the ground, causing instant death. *Held* that the act was done with the intention of causing such bodily injury as was likely to cause death, and also with the knowledge that such act was likely to cause death, and that the offence committed was murder within the provisions of cls. 2 and 3, s. 300, Penal Code.—*Queen v. Dasser Bhooyan*, 8 W. R. 71. [Kemp, Seton-Karr, and Mitter, JJ. Sep. 11, 1867.]

WHERE an accused killed A, whom he had no intention of killing, by a blow with a highly lethal weapon, like a sharp dao, intended to kill B, he was held guilty of the murder of A.—*Queen v. Phomonee Ahum*, 8 W. R. 78. [Glover, J. Oct. 29, 1867.]

IN order to constitute the offence of attempt to murder under s. 307 of the Penal Code, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter* under s. 511 taken in connection with ss. 299 and 300. Therefore, where the prisoner presented an uncapped gun at E G (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger, *held* that he could not be convicted of an attempt to murder upon a charge framed under s. 307 of the Penal Code, but that, under the same circumstances, he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with ss. 299 and 300. Unnecessary allegations in a charge may be rejected as surplusage. Apparent inconsistency between the English law, with reference to attempts, as laid down in *Reg. v. Collins* (33 Law J. M. C. 177) and the provisions of the Penal Code explained.—*Reg. v. Francis Cassidy*, 4 Bom. H. C. R. 17. [Couch, C.J., and Westropp, J. Dec. 23, 1867.]

THE three accused were convicted of murdering their cousin, who had supplanted one of the accused in an intrigue with Mussammat F. The accused caught the deceased and Mussammat F together. *Held* that, with due advertence to the state of society in the Rawalpindi district (where the case occurred), the sentences of death should be commuted.—*Crown v. Fuzl Panj. Rec.*, No. 2 of 1867.

ACCUSED confessed to a charge of murder. His confession, made before the Magistrate and Sessions Court, was, in fact, corroborated by other evidence, but conflicted with the medical evidence; and the Sessions Judge considered it not improbable that accused had been influenced by the police to confess. *Held*, by the Chief Court, that it would be safer not to confirm the sentence.—*Crown v. Meer Khan, Panj. Rec.*, No. 3 of 1867.

WHEN a prisoner is on his trial by a jury upon a charge of murder, it is the duty of the Judge to point out to the jury accurately the difference between murder and culpable homicide not amounting to murder, and to direct the attention of the jury to the evidence, and to leave them to find the facts, and say (under the direction of the Judge as regards the law) of what offence the prisoner is guilty. Where the provision of s. 379 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 297 of the new Code of Criminal Procedure (Act X. of 1882), was neglected, and the Judge did not sum up the evidence at all, a new trial was ordered. *Elahce Buksh's Case* (5 W. R. 80) considered.—*Queen v. Shumshere Beg*, 9 W. R. 51. [Macpherson and Glover, JJ. Mar. 28, 1868.]

TO BRING a case under cl. 4, s. 300, it must be proved that the accused, in committing the act charged, knew that it must, in all probability, be likely to cause death, or that it would bring about such bodily injury as would be likely to cause death. *Held* that a case in which the accused person pursued a thief, and killed him after house-trespass had ceased, did not fall within the 2nd excep. to s. 300, the right of private defence of property continuing under cl. 5, s. 105, only so long as the house-trespass continues.—*Queen v. Balakee Jolahed*, 10 W. R. 9; 1 B. L. R. S. N. 8. [Glover, J. July 3, 1868.]

IN determining whether a declaration alleged to have been made by a deceased person is admissible as a dying declaration under s. 371, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 32 of the Indian Evidence Act (I. of 1872), a Sessions Judge ought to direct his attention to the point whether the declarant believed himself to be in danger of approaching death. The evidence of persons who cannot speak of their personal knowledge to such declaration should not be admitted; and, in deciding whether the accused is guilty of the charge of murdering the deceased declarant, the Court should confine itself to inquiring into the facts which occurred on the day of the murder. The evidence as to the motives with which a prisoner commits an offence should be of the strictest kind.—*Queen v. Zuhir and another*, 10 W. R. 11. [Phear and Hobhouse, JJ. July 8, 1868.]

TO give an accused the benefit of excep. 1, s. 300 of the Penal Code, it ought to be shown distinctly, not only that the act was done under the influence of some feeling which took away from the person doing it all control over his action, but that that feeling had an adequate cause.—*Queen v. Huri Giree*, 10 W. R. 26; 1 B. L. R. A. Cr. 11. [Loch and Glover, JJ. Aug. 7, 1868.]

*Held* that where, from the circumstances, it appeared that a child who had been exposed by the prisoner did not die in consequence of the exposure, except in a remote degree, the prisoner, though guilty under s. 317 of the Penal Code, could not be convicted of murder. That section contemplates cases in which death is caused from cold or some other result of exposure.—*Queen v. Khodabux Fakeer alias Khudiram Fakeer*, 10 W. R. 52. [Loch and Glover, JJ. Nov. 19, 1868.]

TO bring a case under cl. 4, s. 300 of the Penal Code, it must be proved that the accused, in committing the act charged, knew that it must, in all probability, be likely to cause death, or that it would bring about such bodily injury as would be likely to cause death. When a poisonous drug was administered to a woman to procure miscarriage, and death resulted, and it was not proved that the accused knew that the drug would be likely to cause death, &c., they were acquitted by the High Court of murder, and convicted of an offence under s. 314 of the Penal Code.—*Queen v. Kalachand Gope and others*, 10 W. R. 59. [Phear and Hobhouse, JJ. Dec. 8, 1868.]

ACCUSED was out in the jungles with his gun. An altercation arose between him and deceased, the former interfering to prevent the latter from committing real or supposed cattle-trespass. Deceased thereupon with a large club attacked accused, who fired without any particular aim, but lowering the muzzle of the gun, so as not to hit a vital part; and death ultimately resulted from the wound inflicted. *Held* that accused's act was not a legal exercise of the right of private defence, as it was not necessary for his defence that he should fire: he had only to stand back and left deceased alone, and he was safe. *Held*, accordingly, that the accused was rightly convicted of culpable homicide not amounting to murder.—*Crown v. Kurreem Buksh*, Panj. Rec., No. 13 of 1868.

GUILTY intention or knowledge is a constituent part of the offence of culpable homicide, and although every unlawful act is presumed to be wrongly intended until the contrary is shown, yet it is for the Court to consider whether the whole case does not disclose circumstances (whether they come from the accused or the prosecutor) which negative the existence of such intention. It is only in the exceptional cases mentioned in s. 300—of which there should be evidence—that culpable homicide can be taken out of the category of murder, and reduced to an offence of lower degree.—*Jehangeer Khan v. Crown*, Panj. Rec., No. 22 of 1868.

A JUDGE was held to have exercised a proper discretion in not passing sentence of death in a case in which the dead body was not found.—*Queen v. Budduruddeen*, 11 W. R. 20. [Norman and Jackson, JJ. Mar. 9, 1869.]

A LARGE body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first-mentioned faction was wounded, and retired to the side of the road, taking no further

active part in the affray. After his retirement a member of the second faction was killed. *Held*, by Norman, J. (whose opinion prevailed), that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under s. 119 of the Penal Code, be made liable for the subsequent murder. *Held* by E. Jackson, J., that he remained a member of the unlawful assembly.—*Queen v. Kabil Cuzee*, 3 B. L. R. A. Cr. 1. [Norman and Jackson, JJ. April 8, 1869.]

THE legal right of private defence of the body and property is not exceeded by a person who is attacked by another with a spear, and who strikes a blow with a lattee, which results in the death of the party attacking; and such right of private defence of the body extends under s. 100 of the Penal Code to the taking of life where grievous hurt is reasonably apprehended.—*Queen v. Moizudin and others*, 11 W. R. 41. [Jackson and Markby, JJ. April 29, 1869.]

THE accused, who professed to be snake-charmers, persuaded the deceased to allow themselves to be bitten by a poisonous snake, inducing them to believe that they had power to protect them from harm. *Held* that the offence would have been murder under s. 300 of the Penal Code, if, under the circumstances of the case, it did not fall within the 5th excep. to that section. *Held* that the consent given by the deceased allowing themselves to be bitten did not protect the accused, such consent having been founded on a misconception of facts, that is, in the belief that the accused had power by charms to cure snake-bites, and the accused knowing that the consent was given in consequence of such misconception (s. 90, Penal Code).—*Queen v. Poonni Fattemah and another*, 12 W. R. 7; 3 B. L. R. A. Cr. 25. [Norman and Jackson, JJ. June 14, 1869.]

PRISONER caused to be given to deceased some substance which he alleged to have been given with intent to bring on madness. *Held* that the act of the prisoner was known to him to be likely to cause death, and therefore he was properly convicted of murder; but as death was not the immediate object of his intention, the sentence of death was commuted.—*Crown v. Khema, Panj. Rec. No. 8 of 1869.*

UPON an inoffensive remark made by deceased, Fazl Khan picked a quarrel with him, and after some words had passed between the two, Fazl Khan held the deceased's arms down by his side, while Muhammad Khan inflicted a stab which caused death. *Held* that the prisoner was improperly convicted of culpable homicide not amounting to murder, and should have been convicted of murder. A Court should find clearly the exception under s. 300, which, in the Court's opinion, exists as a reason for reducing the offence to culpable homicide not amounting to murder.—*Mahomed Khan v. Crown, Panj. Rec., No. 12 of 1869.*

WHERE there was no direct evidence of a murder having been committed, but the accused confessed that he had burnt the body of the deceased after death, though he denied that he had murdered her, or that she had been murdered, the Court presumed from all the acts and statements of the accused, and the presence of motive and other circumstances, that deceased was violently put to death, and by the hands of the accused, and confirmed the sentence of death accordingly.—*Crown v. Bunna, Panj. Rec., No. 13 of 1869.*

WHERE the accused were convicted of rioting and murdering a jamadár of chaukidárs, who was assisting the police to apprehend a proclaimed offender, *held* that the fact of the murder being committed without preconcertion or personal enmity did not warrant the Sessions Judge in abstaining from passing sentence of death.—*Crown v. Ditta, Panj. Rec., No. 31 of 1869.*

UNDER excep. 1, s. 300, the finding of a jury as to whether the offence of murder was committed under grave and sudden provocation sufficient to prevent the offence from amounting to murder, is a question of fact with which the High Court cannot interfere.—*Queen v. Sohraie*, 13 W. R. 33. [Jackson and Hobhouse, JJ. Feb. 19, 1870.]

WHERE the accused pleads guilty before a Sessions Judge to a charge of murder, the Sessions Judge might either convict him on that plea of that charge, or proceed to try him on the evidence; but he cannot, without trial, convict the accused of culpable homicide not amounting to murder, to which offence the accused did not plead guilty. *Held*, with reference to the provisions of ss. 97, 99, and 102 of the Penal Code, that on the facts of this case the accused had no reasonable apprehension of danger to himself from the threats of the deceased whom he killed, and that, therefore, the right of private defence of the body did not arise, and the case was not taken out of the category of murder by reason of the 2nd excep. to s. 300 of the Penal Code.—*Queen v. Gobadur Bhooyan*, 13 W. R. 55; 4 B. L. R. Ap. 101. [Jackson and Glover, JJ. April 6, 1870.]



ON a conviction for murder, the only punishments that can legally be awarded are death or transportation for life.—*Queen v. Bani Doss and others*, 14 W. R. 2. [Bayley and Markby, JJ. June 4, 1870.]

A, of Allyghur, obtained a decree against B and C of Kasheepoor, for their share in certain property. A sent four men to take possession and plough the land, which was opposed by six men of Kasheepoor. A fight ensued, resulting in the death of one of the Kasheepoor men, caused by a blow inflicted by one of the Allyghur men. The Deputy Commissioner convicted the four Allyghur and five surviving Kasheepoor men of being members of an unlawful assembly, and of culpable homicide. *Held*, on appeal, that there was no common object on the part of the two factions, and therefore they did not jointly form an unlawful assembly under s. 141, that the Kasheepoor men merely exercised the right of private defence under s. 97, and that the Allyghur men, being less than five in number, did not compose an unlawful assembly, but that the Allyghur man who struck the fatal blow was guilty of culpable homicide, and the rest of his party of abetting that offence—*Kullan v. Crown*, Panj. Rec., No. 13 of 1870.

CONVICTION by a jury set aside in a case of murder in which there was a total absence of all evidence to show that the prisoner had committed the crime.—*Queen v. Bahar Ali Kahar*, Appellant, 15 W. R. 46. [Jackson and Mookerjee, JJ. Mar. 25, 1871.]

CAPITAL sentence should be pronounced on a conviction for murder, even if the accused be pregnant, although the execution of the sentence should be deferred till after delivery.—*Queen v. Panhee Aurut*, Appellant, 15 W. R. 66. [Bayley and Paul, JJ. May 3, 1871.]

PERSONS found guilty of rioting may, if the circumstances warrant it, be convicted of the several offences of rioting armed with deadly weapons, culpable homicide, and grievous hurt.—*Queen v. Hurgobind*, 3 N. W. P. 174. [Turner, J. July 7, 1871.]

IN a case in which the prisoner was charged with murder, and he made a confession that he did strike the deceased with a stick, the Sessions Judge, after considering the evidence, discredited the confession and all the evidence except that of the medical officer, and discharged the prisoner, not considering it necessary that the case should go before a jury. *Held* that the Sessions Judge had no right to pronounce his own judgment on the credibility of the evidence, and to withdraw the consideration of the due weight to be given to the evidence from the jury.—*Hurro Shaha*, Revision of Proceedings in the Case of, 16 W. R. 20. [Ainslie and Paul, JJ. July 20, 1871.]

THE Court has no power, even where there is ground for doing so, to mitigate a sentence of transportation for life passed on persons found guilty of murder.—*Queen v. Jamal and others*, Appellants, 16 W. R. 65. [Kemp and Jackson, JJ. Dec. 9, 1871.]

WHERE the Sessions Judge convicted the accused of culpable homicide not amounting to murder, and sentenced him to seven years' rigorous imprisonment, the Chief Court, on the Revision Side, not finding any of the exceptions under s. 300 established, altered the conviction to one of murder, and sentenced the accused to transportation for life.—*Crown v. Gholam Mahomed*, Panj. Rec., No. 11 of 1871.

ACCORDING to the prisoner's statement (the only direct evidence in the case), Mussamat Wahabji solicited him to continue a criminal intercourse which had existed between them; and on his declining, she kicked him, on which he struck her a blow over the region of the heart, throttled her still she ceased breathing, and then flung the body into a well. *Held* that there was not such grave and sudden provocation as reduced the offence to culpable homicide, and that the case did not fall under the 4th excep. of s. 300, Penal Code (sudden fight, &c.), because the prisoner acted in a cruel and unusual manner, but that the provocation received by the accused was a sufficient reason for not passing sentence of death. Sentence commuted accordingly.—*Crown v. Sumundur*, Panj. Rec., No. 4 of 1872.

J, WITH three others, all of them unarmed, attempted late at night to steal wood from H S's field. M S, who was in charge of the field, raised an alarm, and H S, with K S and L S, came up and seized J and S D, another of the thieves. H S and his party, who were armed with sticks, struck J and S D, and took them into the village, J being senseless from the blows, and S D uninjured. J died next morning from one of the blows received, which had broken one of his ribs, and which was the only serious blow inflicted. The Deputy Commissioner convicted H S, M S, K S, and L S of culpable homicide, holding that though it was not shown which of the four inflicted the fatal blow, they were all found guilty, as they were acting together for a common purpose. *Held* by the Chief

Court that, with reference to the common purpose of the accused to arrest the deceased, who with others was attempting to commit theft, and other circumstances in the case, and as it had not been found that the accused had used excessive violence, the conviction must be set aside.—*Hira Singh v. Crown*, Panj. Rec., No. 26 of 1872.

WHERE it appeared that the prisoner, a Rajput, had allowed his female child, after the mother's death, to gradually languish away and die from want of proper sustenance, and had persistently ignored the wants of the child, although repeatedly warned of its state and the consequences of his neglect of it, and there was nothing to show that the prisoner was not in a position to support the child, *held* that the offence which the prisoner committed was murder, and not simply culpable homicide not amounting to murder.—*Queen v. Gunja Singh*, 5 N. W. P. 44. [Spankie, J. Feb. 19, 1873.]

IN a case of murder, the statement made by the deceased in the presence of his neighbours and of a head-constable was admitted as relevant evidence under s. 22, cl. 1, Act I. of 1872, that section providing that such statement is relevant whether the person who made the statement was or was not at the time when it was made under expectation of death.—*Queen v. Degumber Thakoor and others*, 19 W. R. 44. [Komp and Glover, JJ. Mar. 12, 1873.]

WHERE a person under sentence of transportation for life on a conviction for murder is found guilty of murder on a subsequent and different charge, the only sentence that can be passed on him according to s. 303, Penal Code, is that of death. The prisoner, who was charged with having committed murder, was found by the jury who tried him to have been of unsound mind at the time he committed the offence. The Sessions Judge, differing in that point from the jury, referred the case to the High Court under s. 263 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 307 of the new Code of Criminal Procedure (Act X. of 1882). *Held* that, in a case of this kind, the High Court will not interfere, without the very clearest proof that the jury were mistaken, and that the interests of justice imperatively required the Court to take action under the extraordinary powers conferred upon it by s. 263, Code of Criminal Procedure, 1872 (corresponding with s. 307, new Code of Criminal Procedure, 1882). On a consideration of the medical evidence, the Court declined to interfere with the verdict of acquittal which the jury came to.—*Queen v. Doorjodhun Shamonto alias Deejabor*, 19 W. R. 45. [Komp and Glover, JJ. Mar. 15, 1873.]

THE accused confessed to a police-constable, on being assured by him that nothing would happen to her, that she had killed her new-born child, and had buried it in the enclosure of her house. This statement led to the discovery of some bones of the head of an infant, a stone stained with blood, and a knife, with which stone and knife she said that she had killed her child. Before the committing Magistrate she made the same statement. In her trial before the Sessions Judge, she admitted the birth of the child. She stated that it did not cry, and that she buried it, not knowing whether it was alive or dead. She also stated that the police-constable had pressed and threatened her, and told her that, if she confessed the truth, nothing would happen to her. She denied having killed the child with the stone and sickle, and said that she had merely pressed it on the ground, and then buried it. There was no evidence to show that the child was born alive. *Held* that the confession before the Magistrate was irrelevant, and that the Court was not prepared to say that the confession made before the Sessions Judge was made after the impression caused by the promise of the police-constable had been fully removed, and that, looking at the fact that a promise of safety had been made, the confession was, even if accepted, a limited character, and there was nothing to show that the child was born alive; and, considering that, if the child was born dead, the accused might, under fear of exposure and disgrace, have wished to conceal the body, the accused must be acquitted of murder.—*Queen v. Mussunat Luchoo*, 5 N. W. P. 86. [Spankie, J. April 5, 1873.]

THE prisoner having admitted before the Court of Session that he had killed his wife, no assessors were impanelled. At the end, however, of his confession, he pleaded that he was not in his right mind at the time. The Judge, therefore, proceeded to record medical and other evidence on the point, and, having come to the conclusion that there was no reason to doubt from the prisoner's conduct, either prior or subsequent to the murder, that in committing the murder he knew that he was doing a wrong act, convicted the prisoner. *Held* that the plea was, in effect, one of not guilty, and that the trial should not have proceeded without assessors, and that it should be quashed.—*Queen v. Chiet Ram*, 5 N. W. P. 110. [Spankie, J. April 14, 1873.]

THE statement of a Judge, who presides at a criminal trial, is, upon a case reserved under the 25th clause of the Charter of the High Court, or upon a case certified by the Advocate-General under its 26th clause, conclusive as to what has passed at the trial. Neither the affidavits of bystanders or of jurors, nor the notes of counsel or of shorthand-writers, are admissible to controvert the statement of the Judge. It is in the discretion of the Judge, who presides at a criminal trial, whether or not he will reserve a point of law for the opinion of the High Court, and such discretion will not be reviewed by the High Court sitting as a Court of review, under cl. 26 of the Letters Patent. *Semle*.—Non-direction by a Judge is not a matter upon which the Advocate-General should grant a certificate under cl. 26 of the Letters Patent. In considering whether a Judge has misdirected the jury, the tenor and general effect of the whole summing-up should be looked at, and if, upon the whole summing-up, the Court is of opinion that substantially the proper direction has been given to the jury, it will not interfere, though the Judge has omitted to direct the jury expressly on some important point. Whether abetment of murder by sorcery or other impossible means is an offence under the Penal Code. *Quere*.—In criminal cases the High Court will not, in general, grant leave to appeal to the Privy Council, unless some important question of law or practice, or jurisdiction, is involved. Considerations that guide the Court in granting leave to appear in such cases stated, and instances in which such leave has been granted mentioned.—*Reg. v. Pestanji Dinshá* and another, 10 Bom. H. C. R. 75. [Westropp, C.J., and Gibbs, Sargent, Bayley, and Melvill, JJ. May 21, 1873.]

In a case in which the accused were charged with murder (s. 302), culpable homicide not amounting to murder (s. 304), and voluntarily causing grievous hurt (s. 325), the Sessions Judge at the trial added a further charge of house-breaking by night in order to the commission of an offence (s. 457). The jury unanimously acquitted the prisoners of the three original charges, and a majority of the jury (four out of five) acquitted them also of the last charge. The Sessions Judge agreed with the verdict of the jury as regards the three original charges, and recorded a formal order acquitting and discharging the prisoners on these three charges. He differed from the majority as to the fourth charge, and referred the case to the High Court under s. 263 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 307 of the new Code of Criminal Procedure (Act X. of 1882). *Held* that where (as in this case) the Sessions Judge has approved a verdict on certain charges, and finally acquitted and discharged the accused as to these charges, the High Court cannot, under s. 263, convict on the facts on these very charges. That section seems to contemplate only a case in which, without recording any order of acquittal or conviction, the Sessions Judge refers the whole case. As there was nothing in this case to show on what grounds the majority of the jury acquitted the prisoners on the additional charge, and as the Sessions Judge agreed with the unanimous verdict as to the three original charges, the High Court presumed that the reason which weighed with the majority of the jury in finding the prisoners not guilty on the additional charge must have weighed with the whole jury in finding them not guilty on all the three other charges, and accordingly the Court could not set aside the verdict of the majority on the last count without practically finding directly in the teeth of the verdict of the unanimous jury on the first three counts.—*Queen v. Udaya Changa* and others, 20 W. R. 73. [Macpherson and Glover, JJ. Nov. 3, 1873.]

In a case in which the accused was tried on charges of murder, culpable homicide, and causing grievous hurt, the jury acquitted him of murder, but convicted him on the other counts. This verdict was recorded by the Sessions Judge, who then, in accordance with s. 263, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 307 of the new Code of Criminal Procedure (Act X. of 1882); questioned the jury as to the grounds for their verdict, and the jury eventually intimated their willingness to convict of murder. The Sessions Judge differed from the first verdict of the jury; but as he had recorded the first verdict, he doubted whether he could accept the second verdict, and referred the case to the High Court under s. 263. *Held* that s. 263 did not apply to such a case as this. There could be no verdict delivered, and no verdict finally recorded, until the last of the questions put by the Sessions Judge to the jury was answered; and as it appeared from the answers of the jury that their findings of facts disclosed that the verdict ought to have been one of guilty on the charge of murder, the Sessions Judge should have entered the verdict of the jury as the verdict of guilty of murder. The case was accordingly returned to the Sessions Judge to enable him to do that, and to pass such sentence as the law directed. It is only when it is necessary in order to ascertain what the verdict of a jury really is, that a Judge is justified under s. 263 in putting questions to the jury.—*Queen v. Sustiram Mandal*, 21 W. R. 1. [Phear and Morris, JJ. Nov. 19, 1873.]

THE knowledge that an act is likely to cause death does not constitute culpable homicide amounting to murder. It must be shown that the act was committed with the knowledge that it must, in all probability, cause death.—*Queen v. Girdharee Singh*, 6 N. W. P. 26. [Turner, J. Nov. 29, 1873.]

WHEN a Sessions Judge finds the accused guilty of murder, the sentence of death must be passed, unless there is some extenuating circumstance, some excuse, which, though the law does not regard it as sufficient to reduce the killing to the offence of culpable homicide, is ground for looking leniently on the act. The fact that the accused was not arrested when actually committing the crime, or in the act of escaping from the spot, is no reason for not passing sentence of death.—*Kamal v. Crown*, Panj. Rec., No. 13 of 1873.

UNDER s. 280 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 423 of the new Code of Criminal Procedure (Act X. of 1882), the High Court altered the conviction in this case from culpable homicide into one for murder, and enhanced the sentence accordingly.—*Queen v. Sheikh Rohcem*, 21 W. R. 39. [Jackson and Ainslie, JJ. Feb. 5, 1874.]

IN a case in which the accused was charged with murder, the Sessions Judge considered the evidence given before him by the witnesses for the prosecution to be false, but nevertheless convicted the accused, acting under s. 219 of the Code of Criminal Procedure, and relying on the evidence which had been given by the same witnesses before the committing officer. *Held* that s. 219 did not apply to this case; that the discretion conferred by that section should be exercised upon substantial materials, rightly before the Court, and reasonably sufficient to guide the judgment of the Court to the truth of the matter, and not upon mere speculation or conjecture; and that, under that section, a Judge may base his judgment on the evidence given before the Magistrate in the presence of the accused, when there are special and particular reasons for considering that evidence to be honest and true, and when that evidence is to a certain extent corroborated by independent testimony before himself.—*Queen v. Amanullah*, 21 W. R. 49; 12 B. L. R. Ap. 15. [Phear and Morris, JJ. Mar. 16, 1874.]

THE High Court, in exercise of the powers conferred on it by s. 280 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 423 of the new Code of Criminal Procedure (Act X. of 1882), altered the conviction in this case by the Sessions Judge from grievous hurt into one for murder, and enhanced the punishment accordingly.—*Queen v. Saffiruddi Palwan* and another, 22 W. R. 5; 13 B. L. R., Ap. 23. [Kemp and Birch, JJ. April 22, 1874.]

THE evidence of a child of immature age—who, the Sessions Judge considered, understood the questions which were put to her, and who was therefore a competent witness under s. 118 of the Evidence Act—taken by the Sessions Judge on a simple affirmation, because she was not aware of the responsibility of an oath, was held to be admissible as evidence under s. 13 of the Oaths Act (X. of 1873). Case of Dwarakanath Dutt (7 W. R. 15), which ruled that a Court, before which a second trial is held, has nothing to do with the evidence given in the former trial, except for the purpose of ascertaining whether the offence in the two trials is the same, followed. A prisoner originally charged with an offence under one section (302), and acquitted of that charge, was committed, the day following that on which she was acquitted, for trial under another section (307), without any witnesses being examined on the charge under s. 307, and without having any opportunity of cross-examining the witnesses on the first charge, with respect to the second charge. *Held* that the irregularity was one which was not covered by s. 293, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 537 of the new Code of Criminal Procedure (Act X. of 1882), and that the prisoner had been prejudiced thereby in her defence. The trial under s. 307 was accordingly quashed, and a new trial ordered.—*Queen v. Mussamat Itwarya*, 22 W. R. 14; 14 B. L. R. 54; Ap. 1. [Kemp and Birch, JJ. May 9, 1874.]

WHERE a blow is struck by A in the presence of, and by the order of, B, both are principals in the transaction; and where two persons join in beating a man, and he dies, it is not necessary to ascertain exactly what the effect of such blow was.—*Queen v. Mohamed Asger* and another, 23 W. R. 11. [Markby and McDonell, JJ. Dec. 12, 1874.]

A PARTY charged along with others with murder, having had a conditional pardon granted to him by the Deputy Magistrate, retracted before the Sessions Judge the statements he had made before the Deputy Magistrate. On being sent back to the Deputy Magistrate, that officer committed him for trial on a charge of giving false evidence.

The Sessions Judge considered that the Deputy Magistrate was bound, under s. 349, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 339 of the new Code of Criminal Procedure (Act X. of 1882), to commit on the original charge of murder, and not on that of giving false evidence; and he recommended that the order of commitment should be quashed, and the Deputy Magistrate directed to commit on the charge of murder. The High Court declined to interfere, as there was evidence on the record tending to support the charge for giving false evidence, and as s. 349 did not have the effect of taking away from Magistrates the power to entertain a charge of this kind.—*Queen v. Mullik Jeechoo*, 23 W. R. 12. [Phear and Morris, JJ. Jan. 4, 1875.]

A SESSIONS Judge is bound to decide whether the offence committed is murder, or culpable homicide not amounting to murder, even if the person who struck the fatal blow is not under trial. If an accused has not his witnesses present, the Judge should, under s. 251, Criminal Procedure Code (Act X. of 1872), corresponding with s. 289, new Code of Criminal Procedure (Act X. of 1882), if he sees grounds for proceeding, first call upon him for his defence, and then postpone the case.—*Queen v. Jumiruddin and Faizuddin alias Fagoo*, 23 W. R. 58. [Jackson and McDonell, JJ. April 8, 1875.]

WHERE a murder is not premeditated, transportation for life is a sufficient punishment. A Sessions Judge should not import into his judgment the opinion of an assessor derived from personal knowledge, and unsupported by evidence on record.—*Queen v. Ram Churn Kurmoker*, 24 W. R. 28. [Birch and Lawford, JJ. July 13, 1875.]

WHERE a person, accused of murder, acknowledged having struck his victim, but repudiated the intention to murder, and the Sessions Judge accepted this acknowledgment as a plea of guilty, and omitted to record any further evidence, *held* that the Judge was bound to accept the statement of the accused as a whole, if it was taken as a confession at all. Conviction for murder accordingly set aside, and new trial ordered.—*Queen v. Sonaoollah*, 25 W. R. 23. [Macpherson and Morris, JJ. Mar. 14, 1876.]

WHERE an act which causes death is done with an intention to kill, the offence is always murder. Where the act causing death is done without any intention to cause death or bodily injury, whether the offence is culpable homicide or murder depends on the degree of risk to human life. If death is a likely result, it is culpable homicide; if it is the most probable result, it is murder. When the act causing death is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, the offence is murder, if the offender knows that the particular person injured is likely, from peculiarity of constitution, or immature age, or other special circumstance, to be killed by an injury which would not ordinarily cause death. When the act causing death is done with the intention of causing such bodily injury as is *likely* to cause death, it is culpable homicide; if done with the intention of causing such bodily injury as is sufficient in the ordinary course of nature to cause death, it is murder. When the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with his clenched fist, producing extravasation of blood on the brain, and she died in consequence, either on the spot, or very shortly afterwards, *held*, there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, the offence was culpable homicide, and not murder.—*Reg. v. Govinda*, I. L. R., 1 Bom. 342. [Kemball and Nánabhái Haridás, JJ. July 18, 1876.]

WHEN an accused person had been charged with the murder of a woman whom he was proved to have attempted to take away from her husband, and the assessors who had heard the case with the Judge found him guilty, but the Judge, without any evidence to support his hypothesis, had thrown out the supposition that the accused was the victim of a conspiracy, and acquitted him, and the Local Government appealed from the sentence of acquittal: Found by the High Court that there was no evidence in support of the Judge's supposition of the innocence of the accused, and *held* that his wrongful acquittal by the Judge could not stand between him and the sentence of death which was the punishment for his offence. The accused was accordingly sentenced to be hanged.—*Queen v. Bidhay Patro*, 26 W. R. 1. [Jackson and McDonell, JJ. Dec. 14, 1876.]

DECEASED, who had an enlarged spleen, was struck by the accused in the course of a quarrel, and died owing to his bodily infirmity. *Held* that, in the absence of any knowledge on the part of the accused of the diseased condition of the deceased, the offence was not culpable homicide, but using criminal force under s. 352, Penal Code.—*Crown v. Jai Dyal*, Panj. Rec., No. 12 of 1876.

ON the trial by a jury of a person on a charge of murder, the jury found the accused not guilty of the offence of murder; but convicted him of culpable homicide not amounting to murder. The Sessions Judge, although he disagreed with the verdict, declined to submit the case to the High Court under s. 263 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 307 of the new Code of Criminal Procedure (Act X. of 1882). The Local Government thereupon directed the Legal Remembrancer to appeal under s. 272 of the Code (or s. 417 of the Code of 1882), and in pursuance of this direction an appeal was preferred by the Junior Government Pleader. *Held* that the appeal was duly made. *Held* further that a judgment passed by the Court of Session, following the verdict of a jury acquitting the prisoner, is a judgment of acquittal within the meaning of s. 272 (or s. 417 of the new Code). *Held* also that there being an acquittal on the charge of murder, the appeal lay.—*Empress v. Judoonath Gangooly*, I. L. R., 2 Cal. 273. [Jackson and McDonell, JJ. Jan. 18, 1877.]

THE prisoner was found guilty, and sentenced, under Reg. IV. of 1797, to transportation for life, for a murder committed in 1861, before the Penal Code came into operation, and the case was sent up to the High Court to confirm the sentence. Reg. IV. of 1797 was repealed by Act XVII. of 1862, and that Act was wholly repealed by Acts VIII. of 1868 and X. of 1872. *Held*, on a reference to a Full Bench, that the conviction was illegal, s. 6 of Act I. of 1868, which provides that the repeal of any Act or Regulation shall not affect any offence committed before the repealing Act shall have come into operation, not being applicable.—*Empress v. Diljour Misser*, I. L. R., 8 Cal. 225. [Garth, C.J., and Kemp, Macpherson, Markby, and Ainslie, JJ. Feb 20, 1877.]

WHERE a jury found an accused person guilty of murder, but refused to convict him, because there had been no eye-witnesses of his crime, and on a second charge from the Judge refused to find him guilty at all, *held* by the High Court, to whom the case was referred, that the Judge ought to have explained to the jury that the testimony of eye-witnesses was not necessary to the establishment of a charge of murder, and that the jury, if they had no doubt of the guilt of the accused, were bound to give effect to the conclusion at which they had arrived.—*Queen v. Gokool Kahar*, 25 W. R. 36. [Ainslie and Mitter, JJ. April 28, 1877.]

THE provocation contemplated by s. 300 of the Penal Code should be of a character to deprive the offender of his self-control. In determining whether it was so, it is admissible to take into account the condition of mind in which the offender was at the time of the provocation.—*Empress v. Khogayi*, I. L. R., 2 Mad. 122. [Innes and Muttusámi Ayyar, JJ. Jan. 22, 1878.]

UP to the 1st January 1862, a person committing the offence of murder was liable to trial and punishment under the Regulations. By Act XVII. of 1862, the Regulations prescribing punishments for offences were repealed, "except as to any offence committed before the 1st January 1862." By the same Act it was declared that no person who should claim the same should be deprived of any right of appeal or reference which he would have enjoyed under such Regulations. By s. 6 of Act I. of 1868, the repeal of an Act does not affect anything done, or any offence committed, or any fine or penalty incurred before the repealing Act shall have come into operation. Under the provisions of this section the repeal of Act VII. of 1862 by Act VIII. of 1868 and Act X. of 1872 did not, in respect of offences committed before the 1st January 1862, affect the penalties prescribed by such Regulations, nor were any of the Regulations prescribing punishments for offences, which were in force before the passing of Act XVII. of 1862, repealed in respect of offences committed before the 1st January 1862, prior to the passing of Act I. of 1868. *Held* accordingly, where a person committed murder in the year 1855, that such person was punishable under the Regulations. *Held* also that, inasmuch as such right as the right of reference given by s. 3 of Reg. IV. of 1797 accrues on conviction, and therefore in the present case had not accrued before Act XVII. of 1862 was repealed, it is doubtful whether a person convicted of murder committed before the 1st January 1862 has such right.—*Empress v. Mulua*, I. L. R., 1 All. 599. [Turner and Spankie, JJ. Feb. 15, 1878.]

THE appellant, having armed himself with a sword, struck in the dark at certain persons in a house, causing wounds which resulted in the death of one person. *Held per* Jackson, J.—That such conduct raises an inference that he intended to cause death. *Per* Ainslie, J.—That though he probably did not see how his blows were directed, as he struck them with a deadly weapon regardless of consequences, he must have known that his act is so imminently dangerous that it must, in all probability, cause such bodily injury as was likely to cause death. *Per* Cunningham, J.—That the offence was culpable homicide

and not murder, being an unpremeditated act of reckless violence rather than an act done with the knowledge or intention which is essential to constitute murder.—*Bejadhur Rai*, Appellant, 2 C. L. R. 211. [Jackson, Ainslie, and Cunningham, JJ. April 1, 1878.]

WHERE the condition of the convict rendered it likely that, if he were hanged, decapitation would ensue, the sentence of death was commuted to one of transportation for life.—*Boodhoo Jolaha*, Appellant, 2 C. L. R. 215. [Markby and Prinsep, JJ. April 15, 1878.]

If a body of men armed with lathies, and under the leadership of one, who, to the knowledge of the rest, is armed with a gun, assemble for the purpose of forcibly carrying off another man's property, and if, in effecting that purpose, any one of the party, taking the gun, shoots and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder under s. 149 of the Penal Code.—*Hari Singh and others v. Empress*, 3 C. L. R. 49. [Jackson, Mitter, and Maclean, JJ. June 4, 1878.]

L, C, K, and D, conspired to kill S. In pursuance of such conspiracy, L first, and then C, struck S on the head with a lathi, and S fell to the ground. While S was lying on the ground, K and D struck him on the head with their lathis. *Held* (Stuart, C.J., dissenting) that inasmuch as K and D did not commence the attack on S, and it was doubtful whether S was not dead when they struck him, transportation for life was an adequate punishment for their offence. Observations by Stuart, C.J., on the impropriety of a judicial officer adding a "note" to his judgment in a criminal case impugning the correctness of the conclusion he has arrived at on the evidence in such case.—*Empress v. Chattr Singh*, I. L. R., 2 All. 33. [Stuart, C.J., and Pearson and Oldfield, JJ. Aug. 15, 1878.]

IN the course of a serious riot one S was killed by a shot from a gun. The first prisoner and others were charged with murder. The Sessions Judge, believing the statement of the first prisoner and his witnesses that he had fired in self-defence, acquitted him of the charge. Upon a petition presented by the widow of the deceased praying the Court to exercise their powers of revision, *held*, 1st, that under the provisions of s. 297 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 439 of the new Code of Criminal Procedure (Act X. of 1882), the High Court may exercise its powers of revision upon information in whatever way received; 2ndly, that it was not intended by the Legislature that the powers given by cl. 1 of s. 297 should be exercised only in the particular instances of error and in the particular manner given in the succeeding clauses, which are merely intended to show the particular course which may be taken in those particular instances of error; 3rdly, that it is not a ground for revision by the High Court that all the evidence for the prosecution which might have been brought before the Sessions Judge has not been brought before him; 4thly, that the words 'material error' in that section cannot be held to include error in the appreciation of evidence; 5thly, that under the 1st clause of s. 297 the High Court cannot set aside findings of fact except in case of an appeal from a conviction.—*In the Matter of Aurokiam*, I. L. R., 2 Mad 38. [Innes, Offg. C.J., and Muttusami Ayyar, JJ. Oct. 25, 1878.]

S. 304A of the Penal Code does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely, by such act, to cause the actual result; and if such knowledge can be imputed, the result is not to be attributed to mere rashness; if it cannot be imputed, still the wilful offence does not take the character of rashness, because its consequences have been unfortunate. Acts, probably or possibly, involving danger to others, but which in themselves are not offences, may be offences under ss. 336, 337, 333, or 304A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge, of the offender, and placed in their appropriate place in the class of offences of the same character.—*Empress v. Ketabdi Mundul*, I. L. R., 4 Cal. 764; 2 C. L. R. 507. [Ainslie and Broughton, JJ. Feb. 26, 1879.]

*HELD* (Stuart, C.J., dissenting) that a Native Indian subject of Her Majesty, being a soldier in Her Majesty's Indian army, who committed a murder in Cyprus while on service in such army, and who was accused of such offence at Agra, might, under s. 9 of Act XI. of 1872, be dealt with in respect of such offence by the Criminal Courts at Agra, Cyprus being a "Native State" in reference to Native Indian subjects of Her Majesty within the meaning of that Act. *Per* Stuart, C.J.—The power of the Governor-General

of India in Council to make laws for the trial and punishment in British India of offences committed by British Indian subjects in British territories other than British India discussed. A Division Court of the High Court ordered the Magistrate (who had refused to inquire in a charge of murder on the ground that he had no jurisdiction) to inquire into such charge, considering that the Magistrate had jurisdiction to make such inquiry. The Magistrate inquired into the charge, and committed the accused person for trial. The Court of Session convicted the accused person on the charge, and sentenced him to death. The proceedings of the Court of Session having been referred to the High Court for confirmation of the sentence, the case came before the Full Court. *Held per Stuart, C.J., Spankie, J., and Oldfield, J.*, that in determining whether such sentence should be confirmed, the Full Court was not precluded by the order of the Division Court from considering whether the accused person had been convicted by a Court of competent jurisdiction.—*Empress v. Sarmukh Singh*, I. L. R., 2 All 218. [Stuart, C.J., and Pearson, Spankie, and Oldfield, JJ. Mar. 28, 1879.]

WHERE an accused was charged with culpable homicide, and the evidence showed that the deceased had an enlarged spleen, and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased, *held* that it was not sufficient, in order to find the accused guilty of a rash act under s. 304A of the Penal Code, that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district, and infer therefrom criminal rashness in beating the deceased; but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district, and also aware of the risk to life involved in striking a person afflicted with that disease.—*Empress v. Safatulla*, I. L. R., 4 Cal. 815. [Morris and White, JJ. Mar. 31, 1879.]

EXCEP. 5 to s. 300 refers to cases where a man consents to submit to the doing of some particular act, either knowing that it will certainly cause death, or that death will be the likely result; but it does not refer to the running of a risk of death from something which a man intends to avert if he possibly can do so, even by causing the death of the person from whom the danger is to be anticipated. *Per Broughton, J.*—Excep. 5 to s. 300 is not applicable to the case of a premeditated fight, but points to a case of a different character, such as suttee.—*Empress v. Rohimuddin* (No. 1), *Nazir Mahomed* (No. 2), and *Somiruddin* (No. 3), I. L. R., 5 Cal. 31; 4 C. L. R. 285. [Ainslie and Broughton, JJ. April 22, 1879.] *Contra*: *Samshere Khan v. Empress*, 7 C. L. R. 158; I. L. R., 6 Cal. 154, *infra*.

WHERE death results in a fight between two bodies of men deliberately fighting together, a greater proportion of the men composing both sides being armed with deadly weapons, and it being further apparent from the evidence that the man slain was an adult, and that no unfair advantage was taken by the one side or the other during the fight, the offence committed is culpable homicide, but does not amount to murder.—*Samshere Khan v. Empress*, I. L. R., 6 Cal. 154; 7 C. L. R. 158. [White and Field, JJ. July 31, 1880.] *Contra*: *Empress v. Rohimuddin*, I. L. R., 5 Cal. 31; 4 C. L. R. 285, *supra*.

A HEAD-CONSTABLE, making an investigation into a case of house-breaking and theft, searched the tents of certain gipsies for the stolen property, but discovered nothing. After he had completed the search, the gipsies gave him a certain sum of money, which he accepted, but at the same time, not deeming it sufficient, he demanded a further sum from them. They refused to give anything more, on the ground that they were poor, and had no more to give. Thereupon he unlawfully ordered one of them to be bound and taken away. On his subordinates proceeding to execute such order, all the gipsies in the camp, men, women, and children, turned out, some four or five of the men being armed with sticks and stones, and advanced in a threatening manner towards the place such gipsy was being bound and the head-constable was standing. Before any actual violence was used by the crowd of advancing gipsies, the head-constable fired with a gun at such crowd, when it was about five paces from him, and killed one of the gipsies, and, having done so, ran away. Any apprehension that death or grievous hurt would be the consequence of the acts of such crowd would have ceased had he released the gipsy he had unlawfully arrested, and withdrawn himself and his subordinates, or had he effected his escape. *Held* that such head-constable had not a right of private defence against the acts of such gipsies, as those acts did not reasonably cause the apprehension that death or grievous hurt would be their consequence, and such head-constable was guilty of culpable homicide amounting to murder.—*Empress v. Abdul Hakim*, I. L. R., 3 All. 253. [Pearson and Straight, JJ. Oct. 5, 1880.]



THE mere fact that the body of the murdered person has not been found is not a ground for refusing to convict the accused person of the murder.—*Empress v. Bhagirath*, I. L. R., 3 All. 388. [Pearson and Straight, JJ. Dec. 24, 1880.]

WHERE the accused was, on a cry of “thief” being raised against him, pursued by certain private persons, in whose view he had not committed any non-bailable or cognizable offence, whereupon he turned and shot dead one of his pursuers who was on the point of seizing him, *held* that the offence was one of culpable homicide not amounting to murder, as the accused, although he was entitled to resist the attempt of his pursuers to capture him in the exercise of his right of private defence, had exceeded the power given him by law when he caused the death of the person against whom he was exercising that right, but without an intention of doing more harm than was necessary for the purpose of defence. *Held*, further, that the accused must be taken to have acted with the intention of causing such bodily injury as was likely to cause death, though he may have intended specifically to cause death, and was therefore guilty of culpable homicide in the greater degree.—*Empress v. Sher Baz, Panj. Rec.*, No. 1 of 1880.

A WOMAN who, with her infant child, eloped from her husband’s house, was afterwards arrested on a charge of murdering the child, which was missing. She made three different statements: (1) that she had left it with her husband; (2) that she had been enticed away by one R, who had taken the child from her; (3) that one H had drowned the child. The Sessions Judge believed the last statement, and convicted her under s. 201 of the Penal Code. *Held* that the conviction was wrong, and must be set aside. S. 201 of the Penal Code does not apply to a case where the person, who is the probable or possible offender, makes statements exculpating himself by inculpating another.—In the Matter of the Petition of Behala Bibi; *Empress v. Behala Bibi*, I. L. R., 6 Cal. 789; 8 C. L. R. 207. [Pontifex and Field, JJ. Mar. 7, 1881.]

A PRISONER was charged with “causing the death of A by inflicting a wound on him with a ‘chheni,’ with the intention of causing bodily injury, such as was sufficient, in the course of nature, to cause death, or which he knew to be likely to cause death.” *Held* that the charge was defective and inexact as regarded the second and third clauses of the definition of murder in s. 300 of the Penal Code. With reference to the second clause, it should have run “likely to cause the death of A, the person to whom the harm was caused.” With reference to the third clause, it should have said “ordinary course of nature.”—*Empress v. Samiruddin*, I. L. R., 8 Cal. 211. [Pontifex and Field, JJ. Dec. 14, 1881.]

P, ACCUSED of the murder of a girl, gave to a police-officer a knife, saying it was the weapon with which he had committed the murder. He also said that he had thrown down the girl’s anklets at the scene of the murder, and would point them out. On the following day he accompanied the police-officer to the place where the girl’s body had been found, and pointed out the anklets. *Held* that such statements, being confessions made to a police-officer, whereby no fact was discovered, could not be proved against P. Observations on the use of confessions made to police-officers. *Reg. v. Jora Hasji* (11 Bom. H. C. R. 242) and *Empress v. Rama Birapa* (I. L. R., 3 Bom. 12) referred to.—*Empress v. Pancham*, I. L. R., 4 All. 198. [Stuart, CJ., and Straight, J. Jan. 10, 1882.]

WHERE a prisoner is constructively guilty of murder under s. 34 of the Penal Code, it is doubtful if he can be said to have committed the offence of murder within the meaning of s. 149, so as to make other prisoners, by a double construction, guilty of murder.—In the Matter of the Petition of Jhubhoo Mahton: *Empress v. Jhubhoo Mahton*, I. L. R., 8 Cal. 739; 12 C. L. R. 233. [McDonell and Field, JJ. April 28, 1882.]

AN accused, who was charged with murder, not being found, the witnesses were examined under s. 327 of Act X. of 1872 (corresponding s. 512 of Act X. of 1882) in his absence. The accused was subsequently arrested and committed on the strength of the evidence taken in his absence. Before the Sessions Court he pleaded not guilty. *Held* that the prisoner having been put upon his trial, and having pleaded, the commitment could not be quashed. *Held* that, if in course of a trial the Sessions Judge should be of opinion that the prosecution has not laid a proper basis for the reception of evidence in the absence of the accused, his proper course is to adjourn the trial under s. 264 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 344 of the new Code of Criminal Procedure (Act X. of 1882), and then, under s. 351 of Act X. of 1872 (corresponding with s. 540 of Act X. of 1882), summon such witnesses as he may deem material. *Semble*: The mere absence of questions in the record of a prisoner’s statement does not render it inadmissible.—*Empress v. Sagambur*, 12 C. L. R. 120. [McDonell and O’Kinealy, JJ. Aug. 10, 1882.]

A was tried on a charge (1) of murder, (2) of abetting B to commit the said murder. The jury, having considered their verdict, were asked by the Clerk of the Crown if they were agreed. The foreman replied that they were, and that their verdict was guilty, and when further asked, he said, "Guilty of abetment—of abetment generally." On the application of counsel for the prosecution a charge was then added of "abetment of murder committed by some person or persons unknown." The additional charge was read aloud to the jury, but was not specially explained to the prisoner, nor was he called upon to plead to it. Counsel for the prisoner was asked by the Judge if he desired to have a new trial on the charge as amended, but he declined. The three charges (*i. e.*, the two original charges and the additional charge) were then read to the jury, who, after deliberation, returned a verdict of "not guilty" on charges Nos. 1 and 2, and of "guilty" on charge No. 3, *viz.*, of abetment of murder by a certain person or persons unknown. On the application of counsel for the prisoner the following points were reserved: (1) whether, under the circumstances, the Court had power to add a new charge; (2) whether the verdict returned on the new charge was valid, the prisoner not having been called on to plead to it. *Held* (Scott, J., *diss.*) that the Judge was wrong in framing a new charge in addition to the original charges. The error, however, was one of form, and not of substance, and under s. 537 of the Criminal Procedure Code (Act X. of 1882) the Court declined to interfere with the conviction. *Held* also that the power exercised by a Court sitting as a Court to decide questions of law reserved in criminal cases under s. 434 of the Criminal Procedure Code (Act X. of 1882) is the power of review, and the Court is a Court of Reference and Revision. *Held* also that, having regard to ss. 228, 229, and 230 of the Criminal Procedure Code, the charge of abetment of murder by B might have been changed into one of abetment generally. *Held* also that, in any case, the conviction was good under ss. 236 and 237 of the Criminal Procedure Code. It was doubtful whether the evidence would establish the offence of murder, abetment of murder by B, or abetment of murder by some one unknown. Even if there had been no charge properly framed, the Judge might, under s. 237, have accepted the verdict returned by the jury, and entered it on the record. The fact that the Judge framed a charge which, *ex hypothesi*, was beyond his authority, and accepted a verdict on that charge, did not affect the legality of the conviction. *Held* that the omission to read and explain the charge to the prisoner did not, under the circumstances, prejudice the prisoner, and was, therefore, immaterial. In the Criminal Procedure Code generally the word "charge" is used as the statement of a specific offence, and not as indicating the entire series of offences of which a prisoner is accused. There is nothing in the Code to indicate that the word is to have a different construction in ss. 226 and 227 from what it has in other sections. The words "without a charge" in s. 226 of the Criminal Procedure Code (Act X. of 1882) will properly apply, not only to a case in which there is no charge at all, but also to a case in which there is no charge of such an offence as the Sessions Judge or Clerk of the Crown may think the prisoner ought to be tried for. If the word "alter" in s. 227 is to be taken to include "addition," as it does in s. 226, the addition permitted must be an addition to some specific charge in the nature of an alteration, and not the addition of a new charge. The words "return of the verdict" in s. 227 mean the return of the final verdict which the Judge is bound to record. Where, on the application of counsel for the prisoner, a question of law has been reserved for the decision of the Court under s. 434 of the Criminal Procedure Code (Act X. of 1882), the prisoner's counsel has the right to begin. *Per* Scott, J.—The test of the admissibility of proposed amendments to a charge is whether such amendment will prejudice the prisoner. The word "charge" is used in the Code both as indicating the whole series of counts or heads of charge, and also as indicating a charge of one specific offence. In s. 227 it is used in the former sense. The word "alter" in s. 227 must be taken to be equivalent to the words "add to or otherwise alter," which are used in s. 226, and consequently the addition of a new "head of charge" is an alteration within the meaning of s. 227.—*Queen-Empress v. Appa Subhana*, I. L. R., 8 Bom. 200. [Sargent, C.J., and Bayley and Scott, JJ. Feb. 18, 1884.]

UPON the trial of A for murder, and B for abetment thereof, a confession by A implicating B cannot be taken into consideration against B under s. 30 of the Evidence Act, 1872.—*Badi v. Queen-Empress*, I. L. R., 7 Mad. 579. [Kernan and Hutchins, JJ. July 30, 1884.]

IN a trial upon a charge of murder, it appeared that the deceased shortly before her death was questioned by various persons as to the circumstances in which the injuries had been inflicted on her, and that she was at that time unable to speak, but was conscious, and able to make signs. Evidence was offered by the prosecution, and admitted by the Sessions Judge, to prove the questions put to the deceased, and the signs made by her in

answer to such questions. *Held* by the Full Bench (Mahmood, J., dissenting) that the questions and the signs taken together might properly be regarded as "verbal statements" made by a person as to the cause of her death within the meaning of s. 32 of the Evidence Act, and were, therefore, admissible in evidence under that section. *Per* Straight, J., that statements by the witnesses as to their impression of what the signs meant were inadmissible, and should be eliminated; but that, assuming that the questions put to the deceased were responded to by her in such a manner as to leave no doubt in the mind of the Court as to her meaning, it was not straining the construction to hold that the circumstances were covered by s. 32. *Per* Mahmood, J., that the expression "verbal statements" in s. 32 should be confined to statements made by means of a word or words, and that the signs made by the deceased, not being verbal statements in this sense, were not admissible in evidence under that section. *Per* Petheram, C.J., that the signs could not be proved as "conduct" within the meaning of s. 8 of the Evidence Act, inasmuch as, taken alone, and without reference to the questions leading to them, there was nothing to connect them with the cause of death, and so to make them relevant; while the questions could not be proved either under expln. 2 of s. 8 or under s. 9, inasmuch as the condition precedent to their admissibility under either of these provisions was the relevancy of the conduct which they were alleged to effect, or of the facts which they were intended to explain. The "conduct" made relevant by s. 8 is conduct which is directly and immediately influenced by a fact in issue or relevant fact, and it does not include actions resulting from some intermediate cause, such as questions or suggestions by other persons. *Per* Mahmood, J., that the word "conduct" as used in s. 8 does not mean only such conduct as is directly and immediately influenced by a fact in issue or relevant fact; that the signs made by the deceased were the conduct of "a person an offence against whom was the subject of any proceeding," and were relevant as such under s. 8, and that the questions put to her were admissible in evidence either under expln. 2 of the same section or under s. 9, by way of an explanation of the meaning of the signs.—*Queen-Empress v. Abdullah*, I. L. R., 7 All. 385. [Petheram, C.J., and Straight, Oldfield, Brodhurst, and Mahmood, JJ. Feb. 27, 1885.]

AN accused person in answer to a charge of murder stated that he had killed his wife, but that he had done so in consequence of his having discovered her in an act of adultery on the previous day. *Held* that such a statement did not amount to a plea of guilty on the charge, and that it was the duty of the Court to try whether the provocation therein disclosed was sufficiently grave and sudden to reduce the offence.—*Netai Luskar v. Queen-Empress*, I. L. R., 11 Cal. 410. [Field and Beverley, JJ. Mar. 25, 1885.]

No judicial officer dealing with the provisions of s. 27 of Act I. of 1872 should allow one word more to be deposed to by a police-officer, detailing a statement made to him by an accused, in consequence of which he discovered a fact, than is absolutely necessary to show how the fact that was discovered is connected with the accused so as in itself to be a relevant fact against him. S. 27 was not intended to let in a confession generally, but only such particular part of it as set the person to whom it was made in motion, and led to his ascertaining the fact or facts of which he gives evidence. *Queen-Empress v. Pancham* (I. L. R., 4 All. 198) and *Queen-Empress v. Babu Lal* (I. L. R., 6 All. 509) discussed and commented on. Thus, when a police-officer deposed than an accused had told him that he had robbed K of Rs. 48, whereof he had spent Rs. 8, and had got Rs. 40, and that he had made over Rs. 40 to him, *held* that the statement that he had robbed K of Rs. 48 was not necessarily preliminary to the surrender of the Rs. 40, and was inadmissible in evidence against him. When also a police-officer deposed to the fact that the accused, who was charged with murder, had stated to him that he and K had stolen some hides from C, and upon such statement he had sent for C, and recorded his information, and when it appeared that C had already informed the police of the fact of the theft, though the witness was not aware of it, *held* that the statement was inadmissible upon the ground that it would be most dangerous to extend the provisions of s. 27, and allow a police-officer, who is investigating a case, to prove an information received from a person accused of an offence in the custody of a police-officer, on the ground that a material fact was thereby discovered by him, when that fact was already known to another police-officer. Although, under some circumstances, a charge of murder may be sustained, when the body of the person said to have been murdered is not forthcoming, still, when that is the case, the strongest possible evidence as to the fact of the murder should be insisted on before an accused is convicted. When an accused charged with murder was alleged to have taken a boat from a place where it had been secured by its owner, and after proceeding some distance in it had abandoned it, and when he was charged with the theft of the boat, *held* that the charge was unsustainable, inasmuch as it was evidently not his intention to convert it to his own use, and make

shall be Sessions Judge and Court of Session for the island of Perim, and shall exercise the same jurisdiction and powers in respect of the administration of civil and criminal justice in the said island, and in respect of the trial of persons committed for trial by the Court of Session for offences committed in the said island as are vested in him in Aden by the said Act." *Held* that the provisions of the Aden Act (II. of 1864), which (as appears from the preamble) deals with the litigation of Aden alone, could not be extended to Perim, without enlarging the subject-matter of the Act. *Held* also that the appointment of the Political Resident at Aden as a Sessions Judge and Court of Session for the island of Perim, made under cl. a of s. 6 of the Scheduled Districts Act (XIV. of 1874), was valid and effectual with reference only to the provisions of the Criminal Procedure Code, and that that portion of the notification which regulates the exercise by the Resident of his powers with reference to Act II. of 1864 should be treated as surplusage. A prisoner charged with having committed murder at Perim was committed by the Magistrate there on the 26th August 1885 for trial before the Political Resident at Aden, by whom he was convicted and sentenced to death on the 14th September 1885. On the 28th January 1886, the High Court of Bombay reversed the conviction and sentence on the ground that the Court of the Resident had no jurisdiction over the island of Perim, and that the Resident, not having been appointed a Judge of a Court of Session for that island, was not competent to try the prisoner. The High Court ordered a retrial before a competent Court. On the 10th February 1886, the Government of Bombay issued the notification (No. 823) above set forth. On the 11th March 1886, an application was made to the High Court of Bombay for the transfer of the case to another Court of Session or to the High Court for trial. *Held* that Perim is a Sessions Division, and that, after the establishment, under the Code of Criminal Procedure, of a Court of Session for the Perim Sessions Division and the appointment of the Resident at Aden as Sessions Judge of that Court, the accused stood properly committed to a Court of Session. The High Court, therefore, could transfer the case from that Court, under s. 526 of the Code, to any other Court of equal or superior jurisdiction, or to the High Court of Bombay. *Per Jardine, J.*—After the High Court had annulled the proceedings in the Court of the Resident at Aden as without jurisdiction, the case could not be treated as still pending in his Court; and as there was no Court of Session in existence at the time of the commitment, it necessarily followed that the case remained in the Magistrate's Court. But, whether the case was considered as pending in the Court of a Magistrate, or of a Resident, or of a Sessions Judge, the High Court has the power to transfer it, and that, under the circumstances, the case should be so transferred to the High Court for trial.—*Queen-Empress v. Maugal Tekchand, I. L. R., 10 Bom. 274, [Birdwood and Jardine, JJ. Mar. 11, 1886.]*

UPON the trial of a person charged with the murder of his wife, it was proved that the accused had entertained well-founded suspicions that his wife had formed a criminal intimacy with another person; that one night the deceased, thinking that her husband was asleep, stealthily left his side; that the accused took up an axe and followed her, found her in conversation with her paramour in a public place, and immediately killed her. *Held* that the act of the accused constituted the crime of murder, the facts not showing "grave and sudden provocation" within the meaning of s. 300, except. 1 of the Penal Code, so as to reduce the offence to culpable homicide not amounting to murder. *Queen-Empress v. Damarua (Weekly Notes, 1885, p. 197) distinguished by Straight, Offg. C.J.*—*Queen-Empress v. Mohan, I. L. R., 8 All. 622. [Straight, Offg. C.J., and Brodhurst, J. June 26, 1886.]*

AN accused person was convicted of culpable homicide not amounting to murder in respect of the widow of his cousin, who lived with him. The evidence showed that the accused was seen to follow the deceased for a considerable distance with a gandasa or chopper, under circumstances which indicated a belief on his part that she was going to keep an assignation and with the purpose of detecting her in doing so. He found her in the act of connection with her paramour, and killed her with the chopper. *Held* that the conviction must be altered to one of murder, as the accused went deliberately in search of the provocation sought to be made the mitigation of his offence, and under the circumstances disclosed it could not be said that he was deprived of self-control by grave and sudden provocation. *Queen-Empress v. Damarua (Weekly Notes, 1885, p. 197) and Queen-Empress v. Mohan (I. L. R., 8 All. 622) referred to.*—*Queen-Empress v. Lochan, I. L. R., 8 All. 635. [Straight, Offg. C.J., and Mahmood, J. Aug. 2, 1886.]*

AT a trial before a Sessions Court a charge was read out to the prisoners to the effect that they, at a certain place, on a certain date, committed murder by causing the death of M, and that they had thereby committed an offence punishable under s. 302 of the Penal Code and within the cognizance of the Court of Session. The prisoners pleaded guilty.

and were convicted on their plea. The charge was not explained to the prisoners. In answer to questions put by the Court, prisoners stated that they had killed M, and that they made the admissions of their own accord and not on the persuasion of any one. *Held* that the conviction must be quashed, and a new trial ordered.—*Aiyavu v. Queen-Empress*, 1. L. R., 9 Mad. 61. [Muttasami Ayyar and Hutchins, JJ. Aug. 27, 1886.]

Punishment for murder by life-convict.

**303.** Whoever, being under sentence of transportation for life, commits murder, shall be punished with death.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

EVERY person, whether within or without the presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 303 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

WHERE a person under sentence of transportation for life on a conviction for murder is found guilty of murder on a subsequent and different charge, the only sentence that can be passed on him according to s. 303, Penal Code, is that of death.—*Queen v. Doorjodhun Shamonto alias Deejabor*, 19 W. R. 45. [Kemp and Glover, JJ. Mar. 15, 1873.]

**304.** Whoever commits culpable homicide not amounting to murder Ditto.

Punishment for culpable homicide not amounting to murder.

shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

CHARGE.—That you, on or about the day of , at , committed culpable homicide not amounting to murder, by causing the death of , and thereby committed an offence punishable under s. 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (II.).

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 304 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

THE two prisoners having confessed that, having caught the deceased in the act of having sexual intercourse with the wife of one of them, they then and there killed him. *Held* that the very grave provocation given to them was such as to reduce their crime from murder to culpable homicide not amounting to murder.—*Queen v. Gour Chunder Polie and another*, 1 W. R. 17. [Kemp and Glover, JJ. Sep. 26, 1864.]

To convict a prisoner of being a member of an unlawful assembly and of culpable homicide not amounting to murder, it must be shewn that he had an illegal object in common with, and took part in the illegal act done by, the others.—*Foiz Ali alias Imdad Ali and others*, Appellant, 1 W. R. 20. [Loch and Glover, JJ. Nov. 4, 1864.]

THE prisoner, having struck the deceased a hasty though fatal blow with a stick in his hand at the time for abusing his mother, was held guilty of culpable homicide not amounting to murder, and not of murder.—*Queen v. Suleem Sheik*, 1 W. R. 23. [Kemp and Glover, JJ. Nov. 11, 1864.]

AN unpremeditated assault (ending in an affray in which death is caused) committed in the heat of passion upon a sudden quarrel, it being immaterial which party offered the provocation or committed the first assault, was held to come within excep. 4 of s. 300 of the Penal Code.—*Queen v. Zalim Rai and others*, 1 W. R. 33. [Kemp and Glover, JJ. Nov. 25, 1864.]

A CAPITAL sentence mitigated in the case of murder committed while under the influence of provocation caused by an intrigue with the wife of the prisoner.—*Queen v. Bhekye alias Sheik Anser*, 1 W. R. 46. [Kemp and Glover, JJ. Dec. 19, 1864.]

THE finding of a jury that, although the accused killed the deceased, the crime was not murder, not because it fell under any of the exceptions allowed by law, but because the accused had no object in killing him, is not a legal finding, and does not amount to a conviction of culpable homicide not amounting to murder.—*Queen v. Uckoor Ghose*, 1 W. R. 50. [Glover, J. Dec. 30, 1864.]

WHEN there is neither intention, knowledge, nor likelihood that the injury inflicted in an assault will or can cause death, the offence is not culpable homicide not amounting to murder, but grievous hurt.—*Queen v. Megha Meeah alias Juckon Meeah*, 2 W. R. 39. [Kemp and Glover, JJ. Mar. 8, 1865.]

WHAT is necessary to bring a case of murder under the 4th excep. to s. 300 of the Penal Code, so as to change the offence into culpable homicide not amounting to murder.—*Queen v. Akal Mahomed*, 3 W. R. 18. [Jackson and Glover, JJ. May 23, 1865.]

THE Sessions Judge having found the prisoners guilty of striking the deceased with the knowledge that the act was likely to cause death—in other words, guilty of murder—convicted and punished them for culpable homicide not amounting to murder. Case remanded for a new trial (Jackson, J., dissenting).—*Queen v. Beria Buzikur and another*, 3 W. R. 38. [Kemp, Jackson, and Glover, JJ. July 6, 1865.]

THE absence of premeditation will not reduce the crime from murder to culpable homicide not amounting to murder.—*Queen v. Mahomed Elim and others*, 3 W. R. 40. [Kemp and Glover, JJ. July 7, 1865.]

IN an affray respecting land one of the aggressive party was killed. The prisoners, who were exercising the right of private defence of property, were acquitted by the jury of culpable homicide, but convicted of rioting. Held that the prisoners, not being legally guilty of any other offence coupled with rioting, and not being rioters, or members of an unlawful assembly, could claim the benefit of s. 104, Penal Code.—*Queen v. Mitto Singh and others*, 3 W. R. 41. [Seton-Karr and Campbell, JJ. July 11, 1865.]

DISPUTE between two parties (the Mollahs and Shikdars), in which the Shikdars attacked and killed one of the Mollahs when exercising the right of retaking their own property; three of the Shikdars being also wounded. The Shikdars were convicted of culpable homicide not amounting to murder, and rioting. As to the Mollahs, Loch, J., was of opinion that they were guilty of voluntarily causing grievous hurt; while the majority of the Court held that they were entitled to the protection conferred by s. 101, Penal Code, on those who, while exercising the right of private defence, caused their assailants any harm other than death.—*Queen v. Tanoo Shikdar and others*, 3 W. R. 47. [Loch, Kemp, and Seton-Karr, JJ. July 17, 1865.]

THE offences of murder and of culpable homicide not amounting to murder, each supposes an intention or knowledge of likelihood of the causing death. In the absence of such intention or knowledge, the offence committed may be the offence of causing grievous hurt.—*Queen v. Bhadoo Poramanick*, 4 W. R. 23. [Loch and Glover, JJ. Nov. 10, 1865.]

WHERE the *corpus delicti* is not established, there can be no conviction for culpable homicide not amounting to murder, nor for intentional omission to give notice of an offence which has not been proved to have been committed.—*Queen v. Ram Ruchea Singh and others*, 4 W. R. 29. [Kemp and Seton-Karr, JJ. Nov. 28, 1865.]

THE Judge having convicted the prisoners of culpable homicide not amounting to murder, after having found that the act by which death was caused was undoubtedly done with the intention of causing such bodily injury as was likely to cause death, the conviction was quashed as illegal, because inconsistent with the finding, and a new trial ordered.—*Queen v. Soumber Gwala and others*, 4 W. R. 32. [Kemp and Seton-Karr, JJ. Dec. 5, 1865.]

INTRIGUING with a sister is sufficient grave provocation to justify a conviction of culpable homicide not amounting to murder as against the brothers who, finding the deceased lying with their sister in the same bed, ill-treated him, from the effects of which ill-treatment he died.—*Queen v. Kasseemuddeen and others*, 4 W. R. 38. [Kemp, J. Dec. 22, 1865.]

WHERE a man of full age (*i.e.*, above 18 years) submits himself to emasculation, performed neither by skilful hand, nor in the least dangerous way, and dies from the injury, the persons concerned in the act are guilty of culpable homicide not amounting to murder.—*Queen v. Baboolun Hijrah and others*, 5 W. R. 7. [Norman and Campbell, JJ. Jan. 15, 1866.]

It is not murder, if a person kills another without intending to take his life, and if the acts done are not such as conclusively indicate an intention to cause such injury as was likely to cause death. In a referred case, and not an appeal, if the High Court deems a conviction wrong, the only course open to it is to annul the conviction and order a new trial for the proper offence.—*Queen v. Sheik Solim and others*, 5 W. R. 41. [Seton-Karr and Macpherson, JJ. Feb. 8, 1866.]

UNDER the Penal Code no constructive, but an actual, intention to cause death is required to constitute murder. Thus, where a lad of 15 years, in the heat of discovery of the deceased in the act of adultery with a near relative's wife, and without the use of any lethal or other weapon, joined that relative in committing an assault on the deceased, who died from the effects thereof, *held* that the offence committed was culpable homicide not amounting to murder.—*Queen v. Gureeboollah*, 5 W. R. 42. [Norman and Campbell, JJ. Feb. 12, 1866.]

WHERE a Judge acquits a prisoner of intention to kill, but admits that the prisoner struck the deceased with a highly lethal weapon, with the knowledge that the act was such as was likely to cause death, the conviction should be for murder, and not culpable homicide not amounting to murder. The failure of the Judge to convict the prisoner on the graver charge is not an error of law with which the High Court can interfere under its revising powers.—*Queen v. Sobeel Mahee*, 5 W. R. 32. [Glover, J. Feb. 22, 1866.]

HELD by the majority of the Court that the offence committed was murder where the death of a weak half-starved old woman, who was detected stealing, was caused in the exercise of the right of private defence, by the doing of more harm than was necessary for the purpose of such defence; *Campbell, J., contra*, being of opinion that a man who detects a thief stealing his property, and who, acting on the sudden impulse of the moment, inflicts on the thief blows so severe as to be likely to cause death, but which he did not at the time know or feel to be likely to cause death, and which would not necessarily have caused death, to a person in ordinary health, but which, owing to abnormal weakness in the deceased not known to him, did cause death, is not guilty of murder, but of culpable homicide not amounting to murder.—*Queen v. Gokool Bowree and others*, 5 W. R. 33. [Norman, Campbell, and Phear, JJ. Feb. 26, 1866.]

A PERSON who beats another brutally and continuously, so that the back of the victim is reduced to a state of pulp, and yet studiously avoids breaking a bone (the very fact of his taking such a precaution evincing deliberation), is guilty of murder or culpable homicide not amounting to murder, according as there may or may not have been grave provocation.—*Queen v. Teprah Fukeer and others*, 5 W. R. 78. [Kemp and Glover, JJ. May 9, 1866.]

THE prisoner, having received great provocation from his wife, pushed her with both arms so as to throw her with violence to the ground, and, after she was down, slapped her with his open hand. The woman died, and, on examination, it appeared that there were no external marks of violence on the body, but that there was a certain degree of disease of the spleen, and that death was caused by the rupture of the spleen. *Held* under the circumstances, that the prisoner was guilty of causing hurt, and not of culpable homicide not amounting to murder.—*Queen v. Panchanun Tantee*, 5 W. R. 97. [Norman and Campbell, JJ. May 28, 1866.]

A JUDGE convicting on a charge of culpable homicide not amounting to murder should record under which of the exceptions in s. 300 the case falls.—*Govt. v. Kalika Misser*, H. Ct., N. W. P., July 3, 1866.

WHERE a man was murdered by his brother and nephew while in the act of dishonouring the brother's wife, *held* that there was grave and sudden provocation within the meaning of excep. 1, s. 300 of the Penal Code, which would have justified the murder if only such force had been used as was necessary to protect the wife from the outrage to which she was being subjected; but that, as the deceased had been beaten in a cruel and vindictive manner, the prisoners were guilty of culpable homicide not amounting to murder.—*Queen v. Maithya Gazeer and another*, 6 W. R. 42. [Kemp and Markby, JJ. July 10, 1866.]

WHERE a thief was caught house-breaking by night with half his body and his head through the wall of a house occupied by none but women except the prisoner and his young idiot son, and where the prisoner suddenly caught up a sort of pole-axe, and, with it, struck the thief five times on his neck and nearly cut off his head, it was held that the offence committed by the prisoner was not murder, inasmuch as it was committed in the exercise of the right of private defence; but that, as the prisoner inflicted more hurt than was necessary for the purpose of defence, he was guilty of culpable homicide not amounting to murder.—*Queen v. Fukeera Chamar*, 6 W. R. 50. [Norman and Seton-Karr, JJ. July 30, 1866.]

THE prisoner, who was charged with culpable homicide not amounting to murder, was tried for that offence, and, there not being sufficient proof to convict on that charge, was tried by the Sessions Judge for not having used lawful means in preventing the riot (s. 154), and was punished for that offence. *Held* that the Sessions Judge was competent to change the charge, and to try the prisoner for any offence coming under any one of the sections of the Code.—*Government v. Thacoor Dass* and another, 1 Agra H. C. R. 13 [Morgan, C.J., Roberts and Turner, JJ., and Spankie and Turnbull, Offg. JJ. Aug. 21, 1866.]

EXPLANATION of the difference between murder, culpable homicide not amounting to murder, and grievous hurt.—*Queen v. Hurry Doss Paul* and others, 6 W. R. 86. [Louch, J. Nov. 28, 1866.]

IN a case of culpable homicide not amounting to murder, it was held that, though the occasion might have been one in which the prisoner was justified in meeting force by force, still, as he inflicted a blow which he must have known was likely to cause death, he had exceeded his right of private defence with reference to cl. 4, s. 99 of the Penal Code.—*Queen v. Fuzza Meeah alias Fuzza Mahomed*, 6 W. R. 89. [Kemp and Markby, JJ. Dec. 13, 1866.]

THE prisoner was convicted and sentenced separately for culpable homicide not amounting to murder, and for being a member of an unlawful assembly. The two offences, however, being held to be one (the latter being only part of the evidence of the former), the conviction and sentence for the second offence were quashed.—*Queen v. Rubbeoolah*, 7 W. R. 13. [Norman and Seton-Karr, JJ. Jan. 16, 1867.] Dissented from in *Queen v. Hurgobind*, 3 N. W. P. 174

A CONVICTION on a charge of causing the disappearance of evidence of an offence, which amounted to culpable homicide not amounting to murder, may be good, though there be no proof of who committed the culpable homicide.—*Queen v. Muddun Mohun Bose* and another, 7 W. R. 22. [Kemp and Markby, JJ. Jan. 26, 1867.]

WHERE a man suddenly cut his wife's throat, it was held that, in order to establish that the act was not done under grave provocation so as to bring the case under excep. 1 of s. 300 of the Penal Code, it is not sufficient to state that the deceased ceased abusing the prisoner then, but it is necessary to show what interval elapsed between the time when the deceased ceased to speak and the instant when the prisoner attacked her.—*Queen v. Nokul Nushyo*, 7 W. R. 27. [Norman and Seton-Karr, JJ. Feb. 4, 1867.]

CAUSING death by branding a thief without the knowledge that the act was so immediately dangerous that it would, in all probability, cause death, or such bodily injury as was likely to cause death, is punishable under s. 304 of the Penal Code as culpable homicide not amounting to murder.—*Queen v. Khedum Misser*, 7 W. R. 54. [Norman and Seton-Karr, JJ. April 8, 1867.]

PROOF of motive, or previous ill-will, is not necessary to sustain a conviction for murder in a case where a person is coolly and and barbarously put to death.—*Queen v. Jaichand Mundle* and others, 7 W. R. 60. [Seton-Karr, J. April 29, 1867.]

IN a case of riot, in which a man was killed, the whole of the members of the unlawful assembly, as well the victorious as the worsted, were held equally guilty of culpable homicide not amounting to murder.—*Queen v. Mana Singh* and others, 7 W. R. 67. [Kemp and Glover, JJ. May 7, 1867.]

WHERE a person snatches up a log of heavy wood, and strikes another with it on a vital part with so much force and vindictiveness as to cause that other person's death almost on the spot, the act must be held to have been done with the knowledge that it was likely to cause death; but, if done without premeditation in the heat of passion on a sudden quarrel, the offence committed is culpable homicide not amounting to murder.—*Queen v. Rajoo Ghose* and others, 7 W. R. 70. [Jackson and Hobhouse, JJ. May 20, 1867.]



# CH. XVI.] OFFENCES AFFECTING THE HUMAN BODY. [SEC. 304.

**EXPLANATION** of the difference between murder, culpable homicide not amounting to murder, and grievous hurt.—*Queen v. Madur Jolaha*, 8 W. R. 28. [Loch, J. June 27, 1867.]

**WHERE** the accused, whose property had frequently been stolen, went out with a lattee to watch his property, and with the lattee struck a thief, who died from the effects of the blows, it was *held* (having regard to the nature of the injuries inflicted, and to the subsequent conduct of the accused) that the case did not fall within the 4th exception to s. 99, and that the prisoner was not guilty of culpable homicide not amounting to murder, but was protected by ss. 97 and 104 of the Penal Code, and had not exceeded the legal right of private defence of property.—*Queen v. Mokee*, 12 W. R. 15. [Norman and Jackson, JJ. June 28, 1867.]

**A PRISONER'S** confession must be taken in its entirety. Where a prisoner confessed that he did not suspect his wife's fidelity; that he left home on business; that on his return he saw what convinced him of his wife's infidelity; and that, maddened at the sight, he killed both her and her paramour, *held* that he was guilty of culpable homicide not amounting to murder, and that the case was one in which he ought to be treated with lenity.—*Queen v. Sheikh Boodboo*, 8 W. R. 38. [Kemp and Glover, JJ. July 9, 1867.]

**CULPABLE** homicide is not murder unless the case comes expressly within the provisions of cls. 1, 2, 3, or 4 of s. 300 of the Penal Code. Under s. 299 an offence may amount only to culpable homicide, not murder, although none of the exceptions specified in s. 300 are applicable to the case. An express finding by the Sessions Judge that the case does not fall under any of the clauses of s. 300 is tantamount to an acquittal of murder; and after such an acquittal the High Court cannot, either as a Court of Appeal, or as a Court of Revision, look at the evidence for the purpose of reversing the acquittal, and of convicting the prisoner of murder. There had been a riot and fight between two factions, and some members of one party (A) were charged with the murder of the leader of the other party (B), and some members of the other party (B) were charged with causing grievous hurt to the leader of (A). *Held* that the members of each party should have been committed for trial separately, and that the Magistrate was wrong in committing the members of party (A) and of party (B) for trial all together upon joint charges as if they had had one common object.—*Queen v. Sheikh Bazu and others*, 8 W. R. 47; B. L. R. Sup. Vol. 750. [Peacock, C.J., and Loch, Bayley, Kemp, Seton-Karr, Phear, and Macpherson, JJ. July 27, 1867.]

**IN** charging a jury on the point of provocation in a case of culpable homicide, a Judge should tell the jury that to bring the case within the exception to s. 300 of the Penal Code, the prisoner must have been deprived of the power of self-control by grave and sudden provocation; that there ought to have been sufficient cause for such loss of self-control; and that the provocation was not voluntarily provoked by the prisoner as an excuse for doing harm.—*Queen v. Gunesh Luskur and others*, 9 W. R. 72. [Glover, J. May 28, 1868.]

**TO** give an accused the benefit of excep. 1, s. 300 of the Penal Code, it ought to be shown distinctly, not only that the act was done under the influence of some feeling which took away from the person doing it all control over his action, but that that feeling had an adequate cause.—*Queen v. Huri Giree*, 10 W. R. 26; 1 B. L. R. A. Cr. 11. [Loch and Glover, JJ. Aug. 7, 1868.]

**ACCUSED** was out in the jungles with his gun. An altercation arose between him and deceased, the former interfering to prevent the latter from committing real or supposed cattle-trespass. Deceased thereupon with a large club attacked accused, who fired without any particular aim, but lowering the muzzle of the gun, so as not to hit a vital part; and death ultimately resulted from the wound inflicted. *Held* that accused's act was not a legal exercise of the right of private defence, as it was not necessary for his defence that he should fire: he had only to stand back, and let deceased alone, and he was safe. *Held* accordingly that the accused was rightly convicted of culpable homicide not amounting to murder.—*Crown v. Kurreeem Buksh*, Panj. Rec., No. 13 of 1868.

**CERTAIN** person whom the accused, a ferryman, was rowing across the river, were drowned by the sinking of a boat. *Held*, on the facts of this case, that the accused could not be convicted of culpable homicide not amounting to murder, as there was nothing to show that he acted with the knowledge that he was likely by such act to cause death within the terms of s. 299 of the Penal Code. The prisoner was convicted under s. 282 of that Code of negligently conveying persons by water for hire in a vessel overloaded or unsafe.—*Revision of Proceedings in the Case of Maganee Behara*, 11 W. R. 3. [Norman and Jackson, JJ. Jan. 26, 1869.]

THE wife of the prisoner had been forcibly taken to the house of the deceased, a native physician, who alleged that her presence was necessary to the due performance of certain incantations. The prisoner, armed with a sword, and watching from the roof of the house, saw his wife being actually violated by the deceased. He jumped down from the roof, and struck deceased with his sword in several places, from the effects of which he died. *Held* that the prisoner's conviction for murder could not be sustained. The offence committed was culpable homicide not amounting to murder.—*Queen v. Ramtahal Kuhar*, 3 B. L. R. A. Cr. 33. [Norman and Jackson, JJ. July 12, 1869.]

IN charging a jury in a case of culpable homicide not amounting to murder, a Judge should call upon the jury to state which description of culpable homicide they consider the accused to have committed, s. 304 of the Penal Code prescribing different punishments for that offence. Where the Judge omitted to require the jury to do this, the High Court held that the conviction was for the lighter description of the offence.—*Queen v. Ameer Khan and others*, 12 W. R. 35; 6 B. L. R. Ap. 87n. [Jackson and Mitter, JJ. July 22, 1869.]

To take the offence of homicide out of the category of murder by reason of grave and sudden provocation, the act must be done whilst the person doing it is deprived of self-control by the grave and sudden provocation. But when the act is done after the excitement had passed away, and there was time to cool, it is murder.—*Queen v. Yasin Sheik*, 12 W. R. 68; 4 B. L. R. A. Cr. 6. [Loch and Glover, JJ. Nov. 23, 1869.]

WHERE the accused pleads guilty before a Sessions Judge to a charge of murder, the Sessions Judge might either convict him on that plea of that charge, or proceed to try him on the evidence; but he cannot, without trial, convict the accused of culpable homicide not amounting to murder, to which offence the accused did not plead guilty. *Held*, with reference to the provisions of ss. 97, 99, and 102 of the Penal Code, that on the facts of this case the accused had no reasonable apprehension of danger to himself from the threats of the deceased whom he killed, and that, therefore, the right of private defence of the body did not arise, and the case was not taken out of the category of murder by reason of the 2nd exception to s. 300 of the Penal Code.—*Queen v. Gobadur Bhooyan*, 13 W. R. 55; 4 B. L. R. Ap. 101. [Jackson and Glover, JJ. April 6, 1870.]

CERTAIN persons made a sudden attack upon the prisoners for the purpose of cutting their crops. The prisoners resisted, and, having no time to complain to the police, inflicted a wound upon one of the assailants with a bamboo, from the effects of which he afterwards died. The Sessions Judge convicted the prisoners under ss. 148 and 304 of the Penal Code. In appeal the High Court held on the facts of the case (and following 7 W. R. 113) that the accused, who were in peaceable possession of their property, and were attacked while in such possession, did not exceed the right of private defence of property under s. 103, Penal Code. The High Court accordingly directed an acquittal.—*Queen v. Gooroo Churn Chung and others*, Appellants, 14 W. R. 69; 6 B. L. R. Ap. 9. [Kemp and Glover, JJ. Nov. 19, 1870.]

WHERE a Sessions Judge, in charging a jury in a case of culpable homicide not amounting to murder, omitted to draw their attention to the two classes of the culpable homicide mentioned in s. 304 of the Penal Code, the High Court considered that the accused were found guilty of the lighter description, and sentenced the accused to the punishment for such lighter description.—*Queen v. Kalichurn Dass and others*, Appellants, 15 W. R. 17; 6 B. L. R. Ap. 86. [Mitter and Ainslie, JJ. Feb. 11, 1871.]

WHERE an old woman of 70 so beat a lad of 18 as to cause his death, and the Assistant Commissioner was of opinion that the beating was in the shape of chastisement, such as a mother would inflict on a disobedient child, and convicted the accused under s. 304A of the Penal Code, *held* that the Assistant Commissioner had no jurisdiction in the case, and that he should have committed the accused for trial before the Sessions Court on a charge under s. 304.—*Mussamut Auhuchia Dosadin v. Mussamut Anoop Koonwar Thakooranee*, 18 W. R. 23. [Kemp and Glover, JJ. June 26, 1872.]

PRISONER killed his mother by beating and kicking her. The Sessions Judge found that the death resulted from brutal beating and kicking, but acquitted of culpable homicide, because the violence was not such as the prisoner must have known to be likely to cause death. *Held* that this was no ground for acquitting of culpable homicide not amounting to murder: the question for the Judge was whether the act was done with the intention of causing bodily injury which was likely to cause death. The Sessions Judge convicted the prisoner on the charge of causing death by a rash act. *Held* that the section

was wholly inapplicable 'Culpable rashness' and 'culpable negligence' distinguished.—Reg. v. Nidamarti Nagabhushanam, 7 Mad. H. C. R. 119. [Holloway and Kindersley, JJ. Oct. 24, 1872.]

To enable a person to plead the extenuating circumstances provided for in s. 300, Penal Code, excep. 1, the provocation and its effects must be sudden as well as grave; and the deprivation of the power of self-control must continue in order to benefit a man who kills another under circumstances of grave provocation.—Queen v. Bechoo Saot and another, 19 W. R. 35. [Glover and Mitter, JJ. Feb. 17, 1873.]

THE High Court as a Court of reference can only deal with cases in which a sentence of death has been passed. The prisoners, fearful of being punished if they allowed him to escape, and thinking that they were acting lawfully, in furtherance of a plan arranged for them by a police-constable and the lumberdar of a village for the capture of an outlaw, for whose arrest a reward has been offered, and in pursuance thereof, killed him while endeavouring to escape. Held that the offence committed came under the third exception in s. 300 of the Penal Code, and was culpable homicide not amounting to murder.—Queen v. Aman, 5 N. W. P. 130. [Spankie and Jardine, JJ. May 2, 1873.]

THE prisoners assaulted a thief so severely that he died. One hundred and forty-one marks of separate blows were found on the body of the deceased; and several of his ribs were broken. Held that s. 304A of the Penal Code was not applicable to the circumstances of the case, and that, taking the offence out of the category of murder, it must still come under s. 304.—Queen v. Man, 5 N. W. P. 235. [Pearson, J. Aug. 4, 1873.]

IN a case in which the accused caused the death of a woman by beating, the medical officer who held the *post-mortem* examination considered that death resulted from rupture of the spleen, but the Civil Surgeon said that no opinion of the cause of death could be formed. The accused having been convicted of causing grievous hurt, and sentenced to six months' rigorous imprisonment by the Deputy Magistrate, the Magistrate considered that the accused ought to have been committed to the Sessions on a charge of culpable homicide, but recommended that the High Court should enhance the sentence which had been passed to one of sufficient severity to meet the offence. Held that the High Court could not deal with the case in the mode suggested; but under s. 297, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 439, new Code of Criminal Procedure (Act X. of 1882), the Court annulled the conviction by the Deputy Magistrate, and directed that the accused should be committed to the Sessions on charges of culpable homicide and of grievous hurt.—Queen v. Hurish Pal, 20 W. R. 63. [Jackson and Mitter, JJ. Sep. 19, 1873.]

IN a case in which the accused was tried on charges of murder, culpable homicide, and causing grievous hurt, the jury acquitted him of murder, but convicted him on the other counts. This verdict was recorded by the Sessions Judge, who then, in accordance with s. 263, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 303, new Code of Criminal Procedure (Act X. of 1882), questioned the jury as to the grounds for their verdict, and the jury eventually intimated their willingness to convict of murder. The Sessions Judge differed from the first verdict of the jury; but as he had recorded the first verdict, he doubted whether he could accept the second verdict, and referred the case to the High Court under s. 263. Held that s. 263 did not apply to such a case as this. There could be no verdict delivered, and no verdict finally recorded, until the last of the questions put by the Sessions Judge to the jury was answered; and as it appeared from the answers of the jury that their findings of facts disclosed that the verdict ought to have been one of guilty on the charge of murder, the Sessions Judge should have entered the verdict of the jury as the verdict of guilty of murder. The case was accordingly returned to the Sessions Judge to enable him to do that, and to pass such sentence as the law directed. It is only when it is necessary in order to ascertain what the verdict of a jury really is that a Judge is justified under s. 263 in putting questions to the jury.—Queen v. Sustiram Mandal, 21 W. R. 1. [Phear and Morris, JJ. Nov. 19, 1873.]

WHERE a prisoner was charged under ss. 304, 325, and 323, and the jury brought in a verdict of guilty under s. 335, held that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322 with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—Queen v. Lukhinarain Agoori, 23 W. R. 61. [Jackson and McDonell, JJ. April 8, 1875.]

WHERE it appeared in the case of a person charged with murder that, while smarting from a severe blow from a stick in the midst of a sudden fight, and possibly apprehensive of further violence, finding a knife at hand, he took it up, and in the *melee* inflicted the

wound which caused the death of the deceased, *held* that, under the circumstances, the accused was guilty, under the Penal Code, s. 304, of culpable homicide not amounting to murder.—*Queen v. Somiruddin*, 24 W. R. 48. [Jackson and McDonell, JJ. Aug. 20, 1875.]

WHERE the prisoner knocked his wife down, put one knee on her chest, and struck her two or three violent blows on the face with the closed fist, producing extravasation of blood on the brain, and she died in consequence, either on the spot, or very shortly afterwards, *held* that, there being no intention to cause death, and the bodily injury not being sufficient in the ordinary course of nature to cause death, the offence committed by the prisoner was not murder, but culpable homicide not amounting to murder.—*Reg. v. Govindá*, I. L. R., 1 Bom. 342. [Kemball and Nánábhái Haridás, JJ. July 18, 1876.]

IN the course of a trivial dispute the accused gave the deceased a severe push on the back, which caused him to fall to the road below, a distance of two and a half cubits. In falling the deceased sustained an injury from which tetanus resulted, which caused his death on the fifth day after. *Held* that on these facts the accused was not guilty of the offence described in s. 304A of the Penal Code, nor of culpable homicide not amounting to murder, because there was no likelihood of the result following, and, *a fortiori*, no designed causing of it.—*Reg. v. Acharjya*, I. L. R., 1 Mad. 224. [Holloway and Innes, JJ. Jan. 19, 1877.]

UNDER s. 288 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 376 of the new Code of Criminal Procedure (Act X. of 1882), the High Court, to which a reference is made by a Court of Session for confirmation of a sentence of death on conviction of murder, cannot, in the absence of an appeal, alter the conviction to one of culpable homicide not amounting to murder, if it be of opinion that the evidence does not establish the former but the latter offence. It must order a new trial for that purpose. Where the prisoners were tried on two charges of murder and culpable homicide not amounting to murder, and the opinion of the assessors was taken on both charges, but the Sessions Judge, being of opinion that the evidence established the former charge, recorded a conviction and sentence for murder only, the High Court, being of opinion, on a reference under s. 287 of Act X. of 1872 (corresponding with s. 374 of Act X. of 1882), that the offence proved was culpable homicide not amounting to murder, did not order a new trial *ab initio*, but directed the Sessions Judge to complete the trial by recording a finding on the second charge of culpable homicide not amounting to murder.—*Reg. v. Bálápá bin Dandápá*, I. L. R., 1 Bom. 639. [Melvill and Kemball, JJ. April 26, 1877.]

WHERE death has resulted from a violent attack, the Magistrate is bound to commit to the Court of Session on a charge of culpable homicide not amounting to murder. Conviction of grievous hurt is contrary to law.—In the Matter of Gopinath Shaha and another, 1 C. L. R. 141. [Markby and Prinsep, JJ. Sep. 6, 1877.]

A SNAKE-CHARMER exhibited in public a venomous snake, whose fangs he knew had not been extracted; and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators. The spectator tried to push off the snake, was bitten, and died in consequence. *Held* that the snake-charmer was guilty, under s. 304 of the Penal Code, of culpable homicide not amounting to murder, and not merely of causing death by negligence, an offence punishable under s. 304A.—*Empress v. Gonesh Doobey*, I. L. R., 5 Cal. 351; 4 C. L. R. 580. [McDonell and Broughton, JJ. July 28, 1879.]

WHERE a mother abandoned her child, with the intention of wholly abandoning it, and knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment, *held* that she could not be convicted and punished under s. 304 and also under s. 317 of the Penal Code, but s. 304 only.—*Empress v. Banni*, I. L. R., 2 All. 349. [Straight, J. Aug. 4, 1879.]

WHERE a person hurt another, who was suffering from spleen-disease, intentionally, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and by his act caused the death of such other person, *held* that he was properly convicted under s. 323 of the Penal Code of voluntarily causing hurt.—*Empress v. Fox*, I. L. R., 2 All. 522. [Stuart, C.J. Dec. 16, 1879.]

B VOLUNTARILY caused hurt to N, who was suffering from spleen-disease, knowing himself to be likely to cause grievous hurt, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and caused grievous hurt to N, from which N died.

*Held* that B ought not to be convicted under s. 304A of the Penal Code of causing death by negligence, but under s. 325 of that Code of voluntarily causing grievous hurt.—*Empress v. O'Brien*, I. L. R., 2 All. 766. [Stuart, C.J., and Spankie, J. Mar. 6, 1880.]

WHERE death results in a fight between two bodies of men deliberately fighting together, a greater proportion of the men composing both sides being armed with deadly weapons, and it being further apparent from the evidence that the man slain was an adult, and that no unfair advantage was taken by the one side or the other during the fight, the offence committed is culpable homicide, but does not amount to murder.—*Samshere Khan v. Empress*, I. L. R., 6 Cal. 154; 7 C. L. R. 158. [White and Field, J.J. July 31, 1880.] *Contra*: *Empress v. Rohimuddin*, 4 C. L. R. 285.

ON a certain evening, M, a common workman, saw N committing adultery with his (M's) wife, and on the following morning, while labouring under the excitement provoked by their misconduct, came upon them, eating food together, while his wife had neglected to provide food for M. M took up a bill-hook, and killed N on the spot. *Held* that, if M connected the subsequent conduct of N and his wife with their misconduct of the preceding evening, and regarded it as implying an open avowal of their criminal relations, which, under the circumstances, he might have done, the provocation was sufficiently grave and sudden to deprive him of self-control, and to reduce the offence from murder to culpable homicide not amounting to murder.—*Boya Munigadu v. Reg.*, I. L. R., 3 Mad. 33. [Innes and Muttusami Ayyar, J.J. April 20, 1881.]

WHERE a person struck another a blow which caused death, without any intention of causing death, or of causing such bodily injury as was likely to cause death, or the knowledge that he was likely by such act to cause death, but with the intention of causing grievous hurt, *held* that the offence of which such person was guilty was not the offence of causing death by a rash act, but the offence of voluntarily causing grievous hurt. *Nidamarti Nagabhushanam* (7 Mad. H. C. R. 119), *Queen v. Pemkoer* (5 N. W. P. 38), *Queen v. Man* (5 N. W. P. 235), *Empress v. Ketabdi Mundul* (I. L. R., 4 Cal. 764), *Empress v. Fox* (I. L. R., 2 All. 522), and *Empress v. O'Brien* (I. L. R., 2 All. 766), followed. The offences of murder, culpable homicide not amounting to murder, and causing death by a rash or negligent act, distinguished.—*Empress v. Idu Beg*, I. L. R., 3 All. 776. [Straight, J. Aug. 12, 1881.]

AN accused person, in answer to a charge of murder, stated that he had killed his wife, but that he had done so in consequence of his having discovered her in an act of adultery on the previous day. *Held* that such a statement did not amount to a plea of guilty on the charge, and that it was the duty of the Court to try whether the provocation therein disclosed was sufficiently grave and sudden to reduce the offence.—*Netaji Luskar v. Queen-Empress*, I. L. R., 11 Cal. 410. [Field and Beverley, J.J. Mar. 25, 1885.]

UPON the trial of a person charged with the murder of his wife, it was proved that the accused had entertained well-founded suspicions that his wife had formed a criminal intimacy with another person; that one night the deceased, thinking that her husband was asleep, stealthily left his side; that the accused took up an axe and followed her, found her in conversation with her paramour in a public place, and immediately killed her. *Held* that the act of the accused constituted the crime of murder, the facts not showing "grave and sudden provocation" within the meaning of s. 300, excep. 1 of the Penal Code, so as to reduce the offence to culpable homicide not amounting to murder. *Queen-Empress v. Damarua* (Weekly Notes, 1885, p. 197) distinguished by Straight, Offg. C.J.—*Queen-Empress v. Mohan*, I. L. R., 8 All. 622. [Straight, Offg. C.J., and Brodhurst, J. June, 26, 1886.]

AN accused person was convicted of culpable homicide not amounting to murder in respect of the widow of his cousin, who lived with him. The evidence showed that the accused was seen to follow the deceased for a considerable distance with a gandas or chopper, under circumstances which indicated a belief on his part that she was going to keep an assignation, and with the purpose of detecting her in doing so. He found her in the act of connection with her paramour, and killed her with the chopper. *Held* that the conviction must be altered to one of murder, as the accused went deliberately in search of the provocation sought to be made the mitigation of his offence, and under the circumstances disclosed it could not be said that he was deprived of self-control by grave and sudden provocation. *Queen-Empress v. Damarua* (Weekly Notes, 1885, p. 197) and *Queen-Empress v. Mohan* (I. L. R., 8 All. 622) referred to.—*Queen-Empress v. Lochan*, I. L. R., 8 All. 635. [Straight, Offg. C.J., and Mahmood, J. Aug. 2, 1886.]

SUBJECT to the other provisions of the Criminal Procedure Code, s. 28 gives power to the High Court and the Court of Session to try any offence under the Penal Code; and the provision it contains as to the other Courts does not cut down or limit the jurisdiction of the High Court or the Court of Session. Three persons were jointly committed for trial before the Court of Session, two of them being charged with culpable homicide not amounting to murder of J, and the third with abetment of the offence. At the trial, the Sessions Judge added a charge against all the accused of causing hurt to C, and convicted them upon both the original charges and the added charge. The assault upon C took place either at the same time as or immediately after the attack which resulted in the death of J. *Held* that the case did not come within the terms of s. 226 of the Criminal Procedure Code (Act X. of 1882), and the adding to the charge was an irregularity which was not covered by ss. 236 and 237, those sections having no application to such a state of things; but that inasmuch as the Sessions Judge was addressed by the pleader who appeared for the accused, and heard all the objections raised, and witnesses might have been called for the defence upon the added charge, the provisions of s. 537 were applicable to the case. *Held* also that the Sessions Judge had power, under s. 28 of the Code, to try the charge, assuming that he had power to add it.—*Queen-Empress v. Kharga*, I. L. R., 8 All. 665. [Edge, C.J. Aug. 30, 1886.]

**304A. Whoever causes the death of any person by doing any rash or**

**negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.\***

WHERE an old woman of 70 so beat a lad of 18 as to cause his death, and the Assistant Commissioner was of opinion that the beating was in the shape of chastisement, such as a mother would inflict on a disobedient child, and convicted the accused under s. 304A of the Penal Code, it was held that the Assistant Commissioner had no jurisdiction in the case, and that he should have committed the accused for trial before the Sessions Court on a charge under s. 304.—*Mussamut Aubuchia Dosadin v. Mussamut Anoop Koonwur Thakooranee*, 18 W. R. 23. [Kemp and Glover, JJ. June 26, 1872.]

PRISONER killed his mother by beating and kicking her. The Sessions Judge found that the death resulted from brutal beating and kicking, but acquitted of culpable homicide, because the violence was not such as the prisoner must have known to be likely to cause death; *Held* that this was no ground for acquitting of culpable homicide not amounting to murder. The question for the Judge was, whether the act was done with the intention of causing bodily injury which was likely to cause death. The Sessions Judge convicted the prisoner on the charge of causing death by a rash act. *Held* that the section was wholly inapplicable. In distinguishing "culpable rashness" from "culpable negligence," the High Court made the following important observations:—"Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The imputability arises from acting despite the consciousness (luxuria). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that, if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection. It is manifest that personal injury, consciously and intentionally caused, cannot fall within either of these categories, which are wholly inapplicable to the case of an act or series of acts themselves intended, which are the direct producers of death. To say that because, in the opinion of the operator, the sufferer could have borne a little more without death following, the act amounts merely to rashness because he has carried the experiment too far, results from an obvious and dangerous misconception. We have had great hesitation whether we ought not to have remitted this case for a finding, whether the Sessions Judge and the assessors think that the act was done with such knowledge as to constitute culpable homicide. We are, however, averse to re-opening criminal cases unless absolutely compelled to do so, and as the evidence makes out, at least, a case of culpable homicide not amounting to murder, and a legal though inadequate sentence (rigorous imprisonment for two years) has been passed, we are able,

\* New section, added by Act XXVII. of 1870, s. 12.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

under s. 426 of the Criminal Procedure Code, 1861 (corresponding with s. 537 of the new Code of Criminal Procedure, 1892), simply to dismiss the appeal. As this is neither a case of rashness nor of negligence, it becomes unnecessary to consider whether in any case a conviction under this new section can properly follow, where the rashness or negligence amounts to culpable homicide. It is clear, however, that if the words 'not amounting to culpable homicide' are a part of the definition, the offence defined by this section consists of the rash or negligent act not falling under that category, as much as of its fulfilling the positive requirement of being the cause of death."—*Reg. v. Nidamarti Nagabhushanam, Prisoner, 7 Mad. H. C. R. 119. [Holloway and Kindersley, JJ. Oct. 21, 1872.]*

WHERE there was medical evidence to show that milk had been administered to a child in such quantities as to kill it, but there was no evidence to show that the milk was administered by the orders of the mother, or that she knew the quantity that was being administered, *held* that there was not sufficient evidence to bring her within s. 304A of the Penal Code. The Sessions Judge found that the mother could not have been ignorant of the fact that her child was being over-fed, or of the probable consequences of such over-feeding: such feeding was inconsistent with the terms of s. 304A, which provides for the causing of death by any rash or negligent act not amounting to murder. What a man does with the knowledge that the consequences will be likely to cause death cannot be reduced to a simply rash and negligent act.—*Queen v. Mussumat Pemkoer, 5 N. W. P. 38. [Spankie, J. Feb. 15, 1873.]*

THREE prisoners assaulted a thief so severely that he died. One hundred and forty-one marks of separate blows were found on the body of the deceased, and several of his ribs were broken. *Held* that s. 304A of the Penal Code was not applicable to the circumstances of the case, and that, taking the offence out of the category of murder, it must still come under s. 304.—*Queen v. Man and others, 5 N. W. P. 235. [Pearson, J. Aug. 4, 1873.]*

THE accused struck his servant with a stick on his side for refusing to obey certain orders given him. The servant was at the time suffering from enlarged spleen, and its rupture caused his death. The Magistrate convicted accused under s. 304A of the Penal Code, and, out of the fine imposed, awarded compensation to the relatives of the deceased, under Act XIII. of 1855. The Chief Court held that the award of compensation was illegal.—*Crown v. Gopal Das, Panj. Rec., No. 7 of 1877.*

WHERE an accused was charged with culpable homicide, and the evidence showed that the deceased had an enlarged spleen, and that his death was caused by rupture of the spleen occasioned by blows inflicted by the accused on the body of the deceased, *held* that it was not sufficient, in order to find the accused guilty of a rash act under s. 304A of the Penal Code, that the jury should be satisfied only of the prevalence of the disease of enlargement of the spleen in the district, and infer therefrom criminal rashness in beating the deceased; but that they should also be satisfied that the accused was aware of the prevalence of such disease in the district, and also aware of the risk to life involved in striking a person afflicted with that disease.—*Empress v. Safatulla, I. L. R., 4 Cal. 815. [Morris and White, JJ. Mar. 31, 1879.]*

WHERE the facts found showed that death resulted from violence intentionally directed against the deceased by the accused, the Chief Court, on the revision side, altered the conviction from one under s. 304A to one under s. 323.—*Empress v. Ganda Singh, Panj. Rec., No. 11 of 1880.*

WHERE a person struck another a blow which caused death, without any intention of causing death, or of causing such bodily injury as was likely to cause death, or the knowledge that he was likely by such act to cause death, but with the intention of causing grievous hurt, *held* that the offence of which such person was guilty was not the offence of causing death by a rash act, but the offence of voluntarily causing grievous hurt. *Nidamarti Nagabhushanam (7 Mad. H. C. R. 119), Queen v. Pemkoer (5 N. W. P. 38), Queen v. Man (5 N. W. P. 235), Empress v. Ketabdi Mundul (I. L. R., 4 Cal. 764), Empress v. Fox (I. L. R., 2 All. 522), and Empress v. O'Brien (I. L. R., 2 All. 766), followed.* The offences of murder, culpable homicide not amounting to murder, and causing death by a rash or negligent act, distinguished.—*Empress v. Idu Beg, I. L. R., 3 All. 776. [Straight, J. Aug. 12, 1881.]*

N, a servant of a railway-company, charged with moving some trucks by coolies on an incline, discharged this duty negligently, and in consequence lost control of the trucks. Under his orders, one of the coolies attempted to stop the trucks, and was killed in such

attempt. *Held* that A had caused the coolie's death by his negligence, within the meaning of s. 304A of the Penal Code. *Reg. v. Longbottom* (3 Cox C. C. 439), *Reg. v. Swindall* (2 C. & K. 230), *Reg. v. Williamson* (1 Cox C. C. 97), referred to.—*Empress v. Nand Kishore*, I. L. R., 6 All. 248. [Oldfield, J. Mar. 8, 1884.]

IN the course of a trivial dispute the accused gave the deceased a severe push on the back, which caused him to fall to the road below, a distance of two and a half cubits. In falling the deceased sustained an injury from which tetanus resulted, which caused his death on the fifth day after. *Held* that on these facts the accused was not guilty of the offence described in s. 304A of the Penal Code, nor of culpable homicide not amounting to murder, because there was no likelihood of the result following, and, *a fortiori*, no designed causing of it.—*Reg. v. Acharyya*, I. L. R., 1 Mad. 224. [Holloway and Innes, JJ. Jan. 19, 1877.]

A SNAKE-CHARMER exhibited in public a venomous snake, whose fangs he knew had not been extracted; and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators. The spectator tried to push off the snake, was bitten, and died in consequence. The High Court held that the snake-charmer was guilty of culpable homicide not amounting to murder under s. 304, and not merely of causing death by negligence, an offence punishable under s. 304A.—*Empress v. Gonesh Doobey* and another, I. L. R., 5 Cal. 351; 4 C. L. R. 580. [McDonnell and Broughton, JJ. July 28, 1879.]

S. 304A of the Penal Code does not apply to a case in which there has been a voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result; and if such knowledge can be imputed, the result is not to be attributed to mere rashness; if it cannot be imputed, still the wilful offence does not take the character of rashness because its consequences have been unfortunate. Acts probably or possibly involving danger to others, but which in themselves are not offences, may be offences under ss. 336, 337, 338, or 304A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge, of the offender, and placed in their appropriate place in the class of offences of the same character. *Reg. v. Nidamarti Nagabhushanam*, Prisoner (7 Mad. H. C. R. 119), cited and approved.—*Empress v. Kutabdi Mundul*, I. L. R., 4 Cal. 764; 2 C. L. R. 507. [Ainslie and Broughton, JJ. Feb. 26, 1879.]

B VOLUNTARILY caused hurt to N, who was suffering from spleen-disease, knowing himself to be likely to cause grievous hurt, but without the intention of causing death or causing such bodily injury as was likely to cause death, or without the knowledge that he was likely by his act to cause death, and caused grievous hurt to N, from which N died. The High Court held that B ought not to be convicted under s. 304A of the Penal Code (Act XXVII. of 1870, s. 12) of causing death by negligence, but under s. 325 of that Code of voluntarily causing grievous hurt.—*Empress v. O'Brien*, I. L. R., 2 All. 766. [Stuart, C.J., and Spankie, J. Mar. 6, 1880.]

A PERSON, without the intention to cause death, or to cause such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, or the intention to cause grievous hurt, or the knowledge that he was likely by his act to cause grievous hurt, but with the intention of causing hurt, caused the death of another person by throwing a piece of a brick at him, which struck him in the region of the spleen and ruptured it, the spleen being diseased. *Held* that the offence committed was not the offence of causing death by a rash or negligent act, but the offence of voluntarily causing hurt.—*Empress v. Randhir Singh*, I. L. R., 3 All. 597. [Oldfield, J. Mar. 7, 1881.]

305. If any person under eighteen years of age, any insane person, any

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

Abetment. of suicide of delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

THE prisoners, having abetted the suicide, were rightly convicted by the Judge for that offence. The sentence was mitigated under the circumstances.—*Government v. Gopaul Singh and others*, 1 Agra H. C. R. 21. [Pearson and Turner, JJ., and Spankie, Offg. J. Sep. 10, 1866.]



**EVIDENCE** that a woman prepared herself to commit suicide in the presence of the accused, that they followed her to the pyre, and stood by her, her step-sons crying, "Ram! Ram!" and one of the accused admitting that he told the woman to say, "Ram! Ram!" and she would become "suttee," proves active connivance and unequivocal countenance of the suicide by the accused, and justifies the inference that they had engaged with her in a conspiracy for the commission of the suttee.—*Queen v. Mohit Paudyal*, 3 N. W. P. 316. [Pearson, J. Sep. 6, 1871.]

**306.** If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**CHARGE.**—That you, on or about the      day of      , at      , abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under s. 306 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (I.)

In a case of suttee three of the prisoners aided a little boy in setting fire to a pile, while another, who did not co-operate in causing the death of the widow, took an active part in causing her to return to the pile, when she had left it after being partially burnt. *Held* that the first three prisoners were guilty of culpable homicide, and the other prisoner of abetment of suicide only. The High Court made the following remarks: "It is found by the assessors and the judge that the first three defendants abetted a little boy in setting fire to the pile. The boy was the son of one of the appellants, who ordered him to apply the fire; the others, being present, aided and abetted. It is contended for these appellants that the offence, if proved, is only abetment of suicide, not culpable homicide; but I think that abetment of suicide is confined to the case of persons who aid and abet the commission of suicide by the hand of the person himself who commits the suicide; when another person, at the request of, or with the consent of, the suicide, has killed that person, he is guilty of homicide by consent, which is one of the forms of culpable homicide. In this case, the person who set fire, which caused the death by fire, is just as much guilty of the homicide as if he had fired a gun or thrown the deceased into the river." As to the other prisoner, the High Court remarked as follows: "The judge simply states as the result of his opinion on the evidence affecting No. 10, that though apparently he did not at first co-operate to cause the death of the widow, he took an active part in causing her to return to the pile . . . I am of opinion that, as Umrao Chowdhry did not abet the acts of Nos. 3, 4, and 5 in setting fire to the pile, his action, as found by the judge, only amounted to an abetment of suicide."—*Queen v. Sahaboll and others*, 1 R. J. and P. J. 174. [Campbell, J. Nov. 27, 1863.]

**307.** Whoever does any act with such intention or knowledge, and under such circumstances, that if he, by that act, caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

Ditto.

When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.\*

Attempts by life-convicts.

#### Illustrations.

(a.) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

\* This clause has been added by Act XXVII. of 1870, s. 11.

(b.) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(c.) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section; and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of this section.

(d.) A, intending to murder Z by poison, purchases poison, and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table, or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

NEITHER under s. 307, nor under s. 394, of the Penal Code, can a prisoner be sentenced to 14 years' transportation, the punishment awardable under those sections being transportation for life, or rigorous imprisonment for 10 years, with fine.—*Queen v. Bhamour Doosadh*, 7 W. R. 41. [Kemp and Glover, JJ. Mar. 11, 1867.]

IN order to constitute the offence of attempt to murder under s. 307 of the Penal Code, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter* under s. 511 taken in connection with ss. 299 and 300. Therefore, where the prisoner presented an uncapped gun at F G (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger, it was held that he could not be convicted of an attempt to murder upon a charge framed under s. 307, but that, under the same circumstances, he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with ss. 299 and 300. Unnecessary allegations in a charge may be rejected as surplusage. Apparent inconsistency between the English law with reference to attempts as laid down in *Reg. v. Collins* (83 Law J. M. C. 177) and the provisions of the Indian Penal Code explained.—*Reg. v. Francis Cassidy*, 4 Bom. H. C. R. 17. [Couch, C.J., and Westropp, J. Dec. 23, 1867.]

A YOUNG Brahman widow was confined of a child. The chief constable of police, acting, as he stated, on information that the accused was about to kill a baby, went to search her house with a number of men, and found her lying on the first floor, and discovered on the second floor a living new-born child wrapped up in a cloth with a cooking pot turned over it. The Sessions Judge convicted the accused of attempt to murder. The High Court on appeal reversed the conviction, on the ground that the evidence was insufficient to support it. It was also held in this case that the chief constable's statement, that he "had information that the accused was about to kill the baby," was most improperly admitted as evidence against the accused. Action of the police censured. When a person abets the commission of an offence, and is present at the time when it is committed, he should be tried, under s. 114 of the Penal Code, for the same offence as the principal.—*Reg. v. Chima*, 8 Bom. H. C. R. 164. [Gibbs and West, JJ. July 6, 1871.]

**308.** Whoever does any act with such intention or knowledge, and under such circumstances, that if he, by that act, caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

#### Illustration.

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that, if he thereby caused death, he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

**309** Whoever attempts to commit suicide, and does any act towards  
 Attempt to commit suicide. the commission of such offence, shall be punished  
 with simple imprisonment for a term which may  
 extend to one year, "or with fine, or with both."\*

Presy. Mag.  
 or Mag. of 1st  
 or 2nd class.  
 Cognizable.  
 Warrant.  
 Bailable.  
 Not comp.

EVIDENCE that a woman prepared herself to commit suicide in the presence of the accused, that they followed her to the pyre and stood by her, her step-sons crying, "Ram! Ram!" and one of the accused admitting that he told the woman to say, "Ram! Ram!" and she would become "suttee," proves active connivance and unequivocal countenance of the suicide by the accused, and justifies the inference that they had engaged with her in a conspiracy for the commission of the suttee.—Queen v. Mohit Pandey and others, 3 N. W. P. 316. [Pearson, J. Sep. 6, 1871.]

R, WITH the intention of committing suicide by throwing herself into a well, ran to the well, where she was arrested. She was convicted under s. 309 of the Penal Code of having attempted to commit suicide. Held that the conviction was illegal.—Queen-Empress v. Ramakka, 1. L. R., 8 Mad. 5. [Muttusāmi Ayyar, J. Oct. 11, 1884]

**310.** Whoever, at any time after the passing of this Act, shall have  
 been habitually associated with any other or others  
 for the purpose of committing robbery or child-  
 stealing by means of or accompanied with murder, is a thug.

Thug.

Punishment.

**311.** Whoever is a thug shall be punished  
 with transportation for life, and shall also be liable  
 to fine.

Ct. of Ses.  
 Cognizable.  
 Warrant.  
 Not bailable.  
 Not comp.

#### OF THE CAUSING OF MISCARRIAGE; OF INJURIES TO UNBORN CHILDREN; OF THE EXPOSURE OF INFANTS; AND OF THE CONCEALMENT OF BIRTHS.

**312.** Whoever voluntarily causes a woman with child to miscarry shall,  
 if such miscarriage be not caused in good faith for  
 the purpose of saving the life of the woman, be  
 punished with imprisonment of either description for a term which may extend  
 to three years, or with fine, or with both; and, if the woman be quick with  
 child, shall be punished with imprisonment of either description for a term  
 which may extend to seven years, and shall also be liable to fine.

Causing miscarriage.

Ct. of Ses.  
 Uncog.  
 Warrant.  
 Bailable.  
 Not comp.

*Explanation.*—A woman who causes herself to miscarry is within the meaning of this section.

THE offence defined in s. 312 can only be committed when a woman is, in fact, pregnant. To constitute the act of abetment, however, it is not necessary that the act abetted should be committed. A, a woman, may fall involuntarily in causing abortion, not being pregnant; but B, who instigated her, believing her to be pregnant, may be guilty of abetting an offence.—Reg. v. Kabul Pattur and another, Appellants, 15 W. R. 4. [Kemp and Glover, JJ. Jan. 21, 1871.]

IN a case in which the child was full-grown, the Court declined to convict the accused of causing miscarriage under s. 312, Penal Code—that section supposing an expulsion of the child before the period of gestation is completed—but convicted them of an attempt to cause miscarriage under ss. 312 and 511 read together.—Reg. v. Arunja Bawa and another, 19 W. R. 32. [Glover and Mitter, JJ. Feb. 4, 1873.]

A WOMAN is with child within the meaning of s. 312 of the Penal Code as soon as she is pregnant. Held, therefore, where a woman was acquitted on a charge of causing herself to miscarry, on the ground that she had only been pregnant for one month, and that there was nothing which could be called even a rudimentary fetus or child, that the acquittal was bad in law.—Queen-Empress v. Ademma, 1. L. R., 9 Mad. 369. [Muttusāmi Ayyar and Braudt, JJ. Mar. 20, 1886.]

\* The words quoted have been substituted by Act VIII. of 1882, s. 7, for the words "and shall also be liable to fine."

Ct. of Ses.  
Uncog.  
Warrant.  
Not bailable.  
Not comp.

**313.** Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

**314.** Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine ; and, if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above-mentioned.

If act done without woman's consent.

Death caused by act done with intent to cause miscarriage—

*Explanation.*—It is not essential to this offence that the offender should know that the act is likely to cause death.

WHEN a poisonous drug was administered to a woman to procure miscarriage, and death resulted, and it was not proved that the accused knew that the drug would be likely to cause death, &c., they were acquitted by the High Court of murder, and convicted of an offence under s. 314 of the Penal Code.—*Queen v. Kalachand Gope and others*, 10 W. R. 59. [Phear and Hobhouse, JJ. Dec. 8, 1868.]

Ditto.

**315.** Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Ditto.

**316.** Whoever does any act under such circumstances that, if he thereby caused death, he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing death of quick unborn child by an act amounting to culpable homicide.

*Illustration.*

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die ; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Ct. of Ses.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

**317.** Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

*Explanation.*—This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child die in consequence of the exposure.

THE prisoner left her child, illegitimate and newly-born, near a road in a thorn-enclosure about 200 yards from the village. The child was found by a traveller, lived for about thirty hours, and then died. It was held that a conviction for murder could not be supported, as it might have been had the child been left on a barren heath or in an unfrequented place, but that the mother was guilty of abandonment under s. 317.—*Mussammatt Nanki v. Crown*, Panj. Rec., No. 23 of 1866.

Held that where, from the circumstances, it appeared that a child who had been exposed by the prisoner did not die in consequence of the exposure, except in a remote degree, the prisoner, though guilty under s. 317 of the Penal Code, could not be convicted of murder. That section contemplates cases in which death is caused from cold or some other result of exposure.—*Queen v. Khodabux Fakeer alias Khudiram Fakeer*, 10 W. R. 52. [Loch and Glover, JJ. Nov. 19, 1868.]

WHERE the prisoner caused the death of her infant child by purposely abstaining from giving the deceased any nourishment, but did not part with the custody of, or abandon, the child, it was held that the prisoner was wrongly convicted of an offence under s. 317, and that the Sessions Judge, in convicting her under s. 304, should have specified the exception under s. 300 which applied to the case.—*Mussammatt Ram Dai v. Crown*, Panj. Rec., No. 18 of 1870.

S. 317 of the Penal Code was intended to prevent the abandonment or desertion by a parent of his or her children of tender years, in such a manner that the children, not being able to take care of themselves, may run the risk of dying or being injured.—*Revision of Proceedings in the Case of Felani Hariani*, 16 W. R. 12. [Bayley and Paul, JJ. June 15, 1871.]

K was delivered of a child at the house of S, her mother, K's husband being then away in Kashmir. K's mother took the child to the house of K's husband's sister, and placed the child naked at her feet or in her lap, saying, "This is your brother's child." S went away, and the child died some hours afterwards. It was held that S had not committed an offence under s. 317, nor had K abetted any such offence.—*Crown v. Mussammatt Khairo*, Panj. Rec., No. 33 of 1872.

ACCUSED, a married woman, eloped, leaving her child, 1½ months old, being at the time supported by her milk, in the house of her husband, who was in charge of it jointly with her, who was under the same legal obligation to protect it, and who, the Magistrate found, was certain, as the mother knew, to take care of it. It was held that there was not a "leaving with the intention of wholly abandoning" the child within the meaning of s. 317, and that the conviction was therefore unsustainable.—*Crown v. Mussammatt Bhuran*, Panj. Rec., No. 5 of 1878.

WHERE a mother abandoned her child, with the intention of wholly abandoning it, and knowing that such abandonment was likely to cause its death, and the child died in consequence of the abandonment, held that she could not be convicted and punished under s. 304 and also under s. 317 of the Penal Code, but s. 304 only.—*Empress v. Banni*, I. L. R., 2 All. 349. [Straight, J. Aug. 4, 1879.]

ACCUSED, a married woman, quarrelled with her husband, and left his house for her parent's house in another village, leaving her child, aged six months, in her husband's house. Her husband was not in the house at the time, but on his return shortly after he found the door shut, his wife absent, and the child lying on the floor crying. He informed the lam-bardar, who arranged for supplying milk for the child, and himself went to the thana to report the matter. It was held that, on the facts found, accused had not left her child with the intention of wholly abandoning it within the meaning of s. 317, and that her conviction under that section was, therefore, not maintainable. *Crown v. Mussammatt Bhuran* (Panj. Rec., No. 5 of 1878) referred to and approved.—*Empress v. Mussammatt Bhagan*, Panj. Rec., No. 4 of 1879.

THE English law on the subject is 24 and 25 Vic., c. 100, s. 27. In order to sustain an indictment under it, it is only necessary to prove that the defendant wilfully abandoned or exposed the child mentioned in the indictment; that the child was then under two years of age; and that its life was thereby endangered, or its health had been or then was likely to be permanently injured. The following facts were held to warrant a conviction on an indictment framed on this section charging the prisoners with abandoning and exposing a child under the age of two years, whereby its life was endangered. One of the prisoners was the mother of a weakly bastard child. When it was five weeks old, both the prisoners put the child in a hamper at S, wrapped up in a shawl, and packed with shavings and

cotton-wool, and the mother took the hamper from S to the booking-office of the railway-station at M (a distance of about four miles), and there left it, having paid the carriage of the hamper to G. The hamper was addressed to the lodgings of the child's father at G, and he had told the mother, previous to the child's birth, that, if she sent it to him, he would keep it. The mother told the clerk at the station to be very careful of the hamper, and to send it by the next train, which was done in ten minutes from the time of its delivery at the station. Upon the address were the words: "With care; to be delivered immediately." The hamper was, as above mentioned, duly sent by train, and was delivered at its address in G in a little less than an hour from the time of its being despatched from M. On its being opened, the child was alive, and lived for three weeks afterwards, when it died from causes not attributable to the conduct of the prisoners or either of them.—*R. v. Falkingham*, L. R., 1 C. C. R. 222; 39 L. J. (M. C.) 47.

A WOMAN, who was living apart from her husband, and who had the actual custody of their child, under two years of age, brought the child, on the 19th October, and left it outside the father's door, telling him she had done so. He knowingly allowed it to remain lying outside his door from about 7 P.M. till 1 A.M., when it was removed by a constable, being then cold and stiff. Upon this state of facts it was held that, although the father had not the actual custody and possession of the child, yet as he was by law bound to provide for it, his allowing it to remain where he did was an abandonment and exposure of the child by him whereby its life was endangered, within the meaning of 24 and 25 Vic., c. 100, s. 27.—*R. v. White*, L. R., 1 C. C. R. 311; 40 L. J. (M. C.) 134.

### 318. Whoever, by secretly burying, or otherwise disposing of, the dead

body of a child, whether such child die before, or  
 Concealment of birth by secret disposal of dead body. after, or during, its birth, intentionally conceals or  
 endeavours to conceal the birth of such child, shall be punished with imprison-  
 ment of either description for a term which may extend to two years, or with  
 fine, or with both.

CHARGE.—That you, on or about the \_\_\_\_\_, at \_\_\_\_\_, by secretly burying the  
 dead body of your infant child, intentionally concealed the birth of such child, and that  
 you have thereby, &c.—8 W. R. Cr. L. 4, No. 672 of 1867.

UPON a prosecution under s. 318 of the Penal Code a person cannot be convicted of  
 concealing the birth of a child in the case of a mere fœtus four months old.—*Pro.*, Aug. 6,  
 1869, 4 Mad. H. C. R. Ap. 63.

## OF HURT.

### REPORT OF THE INDIAN LAW COMMISSIONERS ON HURT.

MANY of the offences which fall under the head of Hurt will also fall under the head of Assault. A stab, a blow which fractures a limb, the flinging of boiling water over a person, are assaults, and are also acts which cause bodily hurt. But bodily hurt may be caused by many acts which are not assaults. A person, for example, who mixes a deleterious portion, and places it on the table of another; a person who conceals a scythe in the grass on which another is in the habit of walking; a person who digs a pit in a public path, intending that another may fall into it, may cause serious hurt, and may be justly punished for causing such hurt. But they cannot, without extreme violence to language, be said to have committed assaults.

We propose to designate all pain, disease, and infirmity, by the name of hurt.

We have found it very difficult to draw a line between those bodily hurts which are

serious, and those which are slight. To draw such a line with perfect accuracy is, indeed, absolutely impossible: but it is far better that such a line should be drawn, though rudely, than that offences some of which approach in enormity to murder, while others are little more than frolics which a good-natured man would hardly resent, should be classed together.

We have, therefore, designated certain kinds of hurt as *grievous*.

We have given this name to emasculation—to the loss of the sight of either eye—to the loss of the hearing of either ear—to the loss of any member or joint—to the permanent loss of the perfect use of any member or joint—to the permanent disfiguration of the head or face—to the fracture and to the dislocation of bones. Thus far we proceed on sure ground. But a more difficult task remains. Some hurts which

REPORT OF THE INDIAN LAW COMMISSIONERS ON HURT—*contd.*

are not, like those kinds of hurt which we have just mentioned, distinguished by a broad and obvious line from slight hurts, may nevertheless be most serious. A wound, for example, which neither emasculates the sufferer, nor blinds him, nor destroys his hearing, nor deprives him of a member or a joint, nor permanently deprives him of the use of a member or a joint, nor disfigures his countenance, nor breaks his bones, nor dislocates them, may yet cause intense pain, prolonged disease, lasting injury to the constitution. It is evidently desirable that the law should make a distinction between such a wound, and a scratch which is healed with a little sticking plaster. A beating, again, which does not maim the sufferer, or break his bones, may be so cruel as to bring him to the point of death. Such a beating, it is clear, ought not to be confounded with a bruise which requires only to be bathed with vinegar, and of which the traces disappear in a day.

After long consideration we have determined to give the name of grievous bodily hurt to all hurt which causes the sufferer to be in pain, diseased, or unable to pursue his ordinary avocations, during the space of twenty days.

This provision was suggested to us by article 309 of the French Penal Code. That article runs thus: "Sera puni de la reclusion, tout individu qui aura fait des blessures ou porte des coups, s'il est résulté de ces actes de violence une maladie ou incapacité de travail personnel pendant plus de vingt jours." *Reclusion*, it is to be observed, signifies imprisonment and hard labour for a term of not less than five, nor more than ten years.

This law appears from the *procès verbal* of Napoleon's Council of State to have been adopted without calling forth a single\* observation. But it has since been severely criticised by French jurists, and has been mitigated by the French legislature. Indeed, it ought to have been completely recast. For it is undoubtedly one of the most exceptionable laws in the Code.

A man who means only to inflict a slight hurt may, without intending or expecting to do so, cause a hurt which is exceedingly serious. A push which to a man in health is a trifle may, if it happens to be directed against a debilitated part of an infirm person, occasion consequences which the offender never contemplated as possible. A blow designed to inflict only the pain of a moment may cause the person struck to lose his footing, to fall from a considerable height, and

to break a limb. In such cases to punish the assailant with five years of strict imprisonment would be in the highest degree unjust and cruel. It is said, and we can easily believe it,† that, in such cases, the French juries have frequently refused, in spite of the clearest evidence, to pronounce a decision which would have subjected the accused to a punishment so obviously disproportioned to his offence.

We have attempted to preserve and to extend what is good in this article of the French Code, and to avoid the evils which we have noticed. It appears to us that the length of time during which a sufferer is in pain, diseased, or incapacitated from pursuing his ordinary avocations, though a defective criterion of the severity of a hurt, is still the best criterion that has ever been devised. It is a criterion which may, we think, with propriety be employed not merely in cases where violence has been used, but in cases where hurt has been caused without any assault, as by the administration of drugs, the setting of traps, the digging of pit-falls, the placing of ropes across a road. But though we have borrowed from the French Code this test of the severity of bodily injuries, we have framed our penal provisions on a principle quite different from that by which the authors of the French Code appear to have been guided. In apportioning the punishment, we take into consideration both the extent of the hurt, and the intention of the offender.

What we propose is that the voluntary infliction of simple bodily hurt shall be punished with imprisonment of either description which may extend to one year, or fine, or both; the voluntary infliction of grievous bodily hurt with imprisonment of either description for a term which may extend to ten years, and must not be less than six months, to which fine may be added.

These are the ordinary punishments. But there are certain aggravating and mitigating circumstances which make a considerable difference.

Where bodily hurt is voluntarily inflicted in an attempt to murder the person hurt, we propose to punish the offender with transportation for life, or with imprisonment for a term which may extend to life, and cannot be less than seven years. It does not appear to us that, where the murderous intention is made out, the severity of the hurt inflicted is a circumstance which ought to be considered in apportioning the punishment. It is undoubtedly a circumstance which will be important as evidence. A Court will generally

\* *Loire Legislation de France*, vol. 30, p. 362.

† *Paillet Manuel de droit Français*. Note on cl. 309 of the Penal Code.

REPORT OF THE INDIAN LAW COMMISSIONERS ON HURT—*contd.*

be more easily satisfied of the murderous intention of an assailant who has fractured a man's skull, than of one who has only caused a slight contusion. But the proof might be complete. To take examples which are universally known: Harley was laid up more than twenty days by the wound which he received from Guiscard; the scratch which Damien gave Louis the Fifteenth was so slight that it was followed by no feverish symptoms. Yet it will be allowed that it would be absurd to make a distinction between the two assassins on this ground.

We propose that when bodily hurt is inflicted by way of torture the punishment shall be very severe. In England, happily, such a provision would be unnecessary. But the execrable cruelties which are committed by robbers in this country for the purpose of extorting property, or information relating to property, render it absolutely necessary here. We propose that in such cases, if the hurt inflicted be what we have designated as *grievous*, the offender shall be punished with transportation for life, or with imprisonment for a term which may extend to life, and which shall not be less than seven years. Where the hurt is not grievous, we propose that the imprisonment shall be for a term of not more than fourteen years, nor less than one year.

Bodily hurt may be inflicted by means the use of which generally indicates great malignity. A blow with the fist may cause as much pain, and produce as lasting injury, as laceration with a knife, or branding with a hot iron. But it will scarcely be disputed that, in the vast majority of cases, the offender who has used a knife or a hot iron for the purpose of wreaking his hatred is a far worse and more dangerous member of society than he who has only used his fist. It appears to us that many hurts which would not, according to our classification, be designated as grievous, ought yet, on account of the mode in which they are inflicted, to be punished more severely than many grievous hurts. We propose, therefore, that where bodily hurt is voluntarily caused by means of any sharp instrument, of fire, of any heated substance, of any corrosive substance, of any

explosive substance, of any poison, internal or external, or of any animal, the maximum of imprisonment may be increased, in cases of grievous bodily hurt to fourteen years, in other cases to three years.

In cases where bodily hurt is voluntarily caused on grave and sudden provocation, we propose to mitigate the punishment. This mitigation is common to cases of hurt and of grievous hurt. But voluntarily causing of grievous hurt on great and sudden provocation will still be punishable more severely than the voluntary causing of hurt not grievous on grave and sudden provocation. The provisions which we propose on this subject are framed on the same principles on which we have framed the law of manslaughter, and may be defended by the same arguments by which the law of manslaughter is defended.

Hitherto we have been considering cases in which hurt has been caused voluntarily. But hurt may be caused involuntarily, yet culpably. There may have been no design to cause hurt, no expectation that hurt would be caused. Yet there may have been a want of due care not to cause hurt. For these cases of the involuntary yet culpable infliction of bodily hurt, we have provided rules which bear a close analogy to those which we have provided for cases of involuntary culpable homicide.

The provision contained in cl. 329 bears, it will be seen, a close analogy to those contained in cls. 308 and 309. We have provided under the head of assault for cases in which an assault is committed in an attempt to cause grievous bodily hurt. But there may be most malignant and atrocious attempts to cause grievous bodily hurt without any assault. For example, Z is directed to use a lotion for his eyes. A substitutes for that lotion a corrosive substance intending that it may destroy Z's eyesight. Again: A makes up a letter addressed to Z, and sends it to the post-office, having placed a strongly explosive substance under the seal, intending that the explosion may seriously injure Z. These are not assaults. Yet they are evidently acts which deserve severe punishment, and that punishment is provided by cl. 329.

Hurt.

319. Whoever causes bodily pain, disease, or infirmity to any person, is said to cause hurt.

WHERE a wife died from a chance kick on the spleen, inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself, and by his conduct immediately afterwards, that he had no intention or knowledge that the act was likely to cause hurt endangering human life, held that the husband was guilty of an offence under ss. 319 and 321 of the Penal Code, and not of an offence under ss. 320 and 322. An admission by the husband in the presence



of several witnesses that he had killed the wife, and that she died after receiving the kick, was held to be direct evidence against him.—*Queen v. Bysagoo Noshyo*, 8 W. R. 29. [Seton-Karr and Hobhouse, JJ. June 29, 1867.]

THE pain caused by a blow across the chest with an umbrella was held to be not of such a trivial character as to come within the meaning of the Penal Code, s. 95.—*Government of Bengal v. Sheo Gholam Lalla*, 24 W. R. 67. [Glover and Mitter, JJ. Nov. 22, 1875.]

**320.** The following kinds of hurt only are designated as "grievous":

Grievous hurt.

*First.*—Emasculation.

*Secondly.*—Permanent privation of the sight of either eye.

*Thirdly.*—Permanent privation of the hearing of either ear.

*Fourthly.*—Privation of any member or joint.

*Fifthly.*—Destruction or permanent impairing of the powers of any member or joint.

*Sixthly.*—Permanent disfiguration of the head or face.

*Seventhly.*—Fracture or dislocation of a bone or tooth.

*Eighthly.*—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

ATTEMPT at murder must not be confounded with causing grievous hurt with dangerous weapons.—*Gholam Russool v. Crown*, Panj. Rec., No. 32 of 1866.

THERE must be evidence to prove that hurt as described in s. 320 of the Penal Code us grievous hurt has been caused before a conviction can be had under s. 320 of that Code.—*Queen v. Kaminee Dasse*, 12 W. R. 25. [Norman and Jackson, JJ. July 6, 1869.]

**321.** Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

A DISABILITY for 20 days constitutes grievous hurt. A disability for a fortnight is punishable for voluntarily causing hurt.—*Queen v. Bishnooram Surma and another*, 1 W. R. 9. [Kemp and Glover, JJ. Aug. 30, 1864.]

WHERE a wife died from a chance-kick on the spleen inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself and by his conduct immediately afterwards that he had no intention or knowledge that the act was likely to cause hurt endangering human life, it was held that the husband was guilty of an offence under ss. 319 and 321 of the Penal Code, and not of an offence under ss. 320 and 322.—*Queen v. Bysagoo Noshyo*, 8 W. R. 29. [Seton-Karr and Hobhouse, JJ. June 29, 1867.]

**322.** Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

*Explanation.*—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

*Illustration.*

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

THE prisoners having abetted an assault, and murder having been committed, it was held, under the peculiar circumstances of the case, that they were guilty of grievous hurt, but not of abetment of murder.—*Queen v. Goluck Chung and others*, 5 W. R. 75. [Campbell and Macpherson, JJ. April 28, 1866.]

WHERE A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured that he died, it was held that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—*Queen v. Doorgessur Surmah*, 7 W. R. 61. [Hobhouse, J. April 30, 1867.]

WHERE a wife died from a chance-kick on the spleen, inflicted by her husband on provocation given by the wife, the husband not knowing that the spleen was diseased, and showing by the blow itself, and by his conduct immediately afterwards, that he had no intention or knowledge that the act was likely to cause hurt endangering human life, held that the husband was guilty of an offence under ss. 319 and 321 of the Penal Code, and not of an offence under ss. 320 and 322.—*Queen v. Bysagoo Noshiyo*, 8 W. R. 29. [Seton-Karr and Hobhouse, JJ. June 29, 1867.]

WHERE a prisoner was charged under ss. 304, 325, and 323, and the jury brought in a verdict of guilty under s. 335, it was held that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322, with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—*Queen v. Lukhiurain Agoori*, 23 W. R. 61. [Jackson and McDonell, JJ. April 8, 1875.]

**323.** Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

A DISABILITY for twenty days constitutes grievous hurt. A disability for a fortnight is punishable for voluntarily causing hurt.—*Queen v. Bishnooram Surma and another*, 1 W. R. 9. [Kemp and Glover, JJ. Aug. 30, 1864.]

THE wounding of a thief by a chaukidar in order to effect his arrest held under the circumstances to be justifiable.—*Queen v. Protab Chaukidar*, 2 W. R. 9. [Campbell and Glover, JJ. Jan. 16, 1865.]

THE prisoner and another were squabbling with the husband and son of the witness Mussamat Mootka at the door of the house. This witness from inside remonstrated, and abused the prisoner. The prisoner then went inside the house, pulled the witness out by the hair of her head, threw her down, and stamped upon her chest and abdomen. She was 17 days in hospital, during three days of which, according to the deposition of the medical officer, her life was in danger. Held that the hurt came under the eighth head of the hurts which are described as grievous.—*Queen v. Bassoo Rannah*, 2 W. R. 29. [Kemp and Glover, JJ. Jan. 30, 1865.]

IN cases of hurt or grievous hurt, the question should be considered, as to who was the aggressor, and whether the offence was committed in the exercise of the right of private defence.—*Queen v. Sohun and another*, 2 W. R. 59. [Campbell and Jackson, JJ. April 10, 1865.]

THE prisoner, having received great provocation from his wife, pushed her with both arms so as to throw her with violence to the ground, and, after she was down, slapped her with his open hand. The woman died, and on examination it appeared that there were no external marks of violence on the body, but that there was a certain degree of disease of the spleen, and that death was caused by the rupture of the spleen. Under the above circumstances, the prisoner was held guilty of causing hurt, and not of culpable homicide not amounting to murder.—*Queen v. Punchanun Tantee*, 5 W. R. 97. [Norman and Campbell, JJ. May 28, 1866.]

WHERE a person was tried and acquitted on a charge of using criminal force, he cannot afterwards be charged with committing hurt in respect of the same transaction.—*Kamptan v. G. M. Smith*, 16 W. R. 3; 7 B. L. R. Ap. 25. [Bayley and Paul, JJ. June 7, 1871.]

WHERE a person scourged another with nettles in order to extract property from the sufferer, and the Magistrate tried the case as one of hurt (under s. 323) and extortion (s. 384), although the accused ought to have been charged under s. 327, and tried by the

Court of Session, the High Court declined to interfere under s. 404, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 439, new Code of Criminal Procedure (Act X. of 1882), and direct a new trial, believing that substantial justice had been done in the case.—*Tarince Prosad Bauerjee and another, Petitioners*, 18 W. R. 8. [Kemp and Glover, JJ. June 14, 1872.]

WHERE, according to the prisoner's own confession (which was the only direct evidence against her), she, with a view to chastising the deceased, her daughter, 8 or 10 years of age, for impertinence, but without any intention of killing her, gave her a kick on the back and two slaps on the face, the result of which was death, *held* that the conviction should be under s. 323, Penal Code, of voluntarily causing hurt, and the punishment one-year's rigorous imprisonment.—*Queen v. Beshor Bewa*, 18 W. R. 29. [Kemp and Glover, JJ. July 9, 1872.]

WHERE a prisoner was charged under ss. 304, 325, and 323, and the jury brought in a verdict of guilty under s. 335, it was held that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322 with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—*Queen v. Lukhinarain Agoori*, 23 W. R. 61. [Jackson and McDonell, JJ. April 8, 1875.]

RIOTING and hurt in the course of such rioting are distinct offences, and each offence is separately punishable.—*Empress v. Ram Adhin*, 1. L. R., 2 All. 139. [Pearson, J. Feb. 13, 1879.]

WHERE a person hurt another, who was suffering from spleen-disease, intentionally, but without the intention of causing death or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and by his act caused the death of such other person, it was held that he was properly convicted, under s. 323 of the Penal Code, of voluntarily causing hurt.—*Empress v. Fox*, 1. L. R., 2 All. 522. [Stuart, C.J. Dec. 16, 1879.]

WHERE the facts found showed that death resulted from violence intentionally directed against the deceased by the accused, the Chief Court, on the revision side, altered the conviction from one under s. 304A to one under s. 323.—*Empress v. Ganda Singh*, Panj. Rec., No. 11 of 1880.

A PERSON, without the intention to cause death, or to cause such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, or the intention to cause grievous hurt, or the knowledge that he was likely by his act to cause grievous hurt, but with the intention of causing hurt, caused the death of another person by throwing a piece of brick at him, which struck him in the region of the spleen, and ruptured it, the spleen being diseased. *Held* that the offence committed was not the offence of causing death by a rash or negligent act, but the offence of voluntarily causing hurt.—*Empress v. Randhir Singh*, 1. L. R., 3 All. 597. [Oldfield, J. Mar. 7, 1881.]

### 324. Whoever, except in the case provided for by section 334, voluntarily causes hurt by means of any instrument for

Voluntarily causing hurt by dangerous weapons or means. shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses., Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Comp. when permission is given by Court before which prosecution pending.

CAUSING hurt on grave and sudden provocation to the person giving the provocation is chargeable as an offence under s. 334, and not under s. 324.—*Reg. v. Bhala Chula*, 1 Bom. H. C. R. 17. [Savage, C.J., and Forbes and Tucker, JJ. July 29, 1863.]

A PRISONER who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under s. 460, and not under ss. 457 and 324 of the Penal Code.—*Queen v. Lukhun Doss*, 2 W. R. 52. [Jackson and Glover, JJ. April 1, 1865.]

SEC. 324.] OFFENCES AFFECTING THE HUMAN BODY. [CH. XVI.

THE offence of rioting armed with deadly weapons, and stabbing a person on whose premises the riot takes place, are distinct offences, and punishable as separate offences under ss. 148, 149, and 324 of the Penal Code, s. 149 being read as a proviso to s. 148.—*Queen v. Callachand and others*, 7 W. R. 60. [Norman and Seton-Karr, JJ. April 29, 1867.]

Held that, where the prisoners were charged under s. 148 of the Penal Code of rioting armed with deadly weapons, and also under s. 324 of voluntarily causing hurt by dangerous weapons, they should have been sentenced only under *one or other* of these sections, the charges being, properly speaking, only alternative charges. The High Court refused to interfere with the reception by the Sessions Judge of the uncorroborated evidence of accomplices.—*Queen v. Dina Sheikh and others*, 10 W. R. 63; 3 B. L. R. 15n. [Phear and Hobhouse, JJ. Dec. 15, 1868.]

UPON the construction of s. 324 of the Penal Code, held that it is not necessary that the manner of use (of the weapon) must be such as is likely to cause death.—*Pro.*, Nov. 5, 1872, 7 Mad. H. C. R. Ap. 11.

UNDER s. 454 of the Criminal Procedure Code, 1872 (corresponding with s. 235 of the Code of 1832), the collective punishment awarded under ss. 147, 148, and 324 of the Penal Code, must not exceed that which may be awarded for the graver offence.—In the Matter of the Petition of Jubdar Kazi and another; *Empress v. Jubdar Kazi and another*, I. L. R., 6 Cal. 718. [Mitter and Maclean, JJ. Feb. 18, 1881.]

THE offences of rioting armed with a deadly weapon and voluntarily causing hurt with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting and of the hurt caused to each of the persons injured. A and B were charged with rioting armed with deadly weapons under s. 148 of the Penal Code, and they were also charged under s. 324 coupled with s. 149, with causing hurt by a dangerous weapon to X, and B was further charged under s. 324 with causing a like hurt to Y, A being also charged under s. 324 coupled with s. 149 in respect of the hurt caused by B to Y. A and B were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. The offences under s. 324 were committed during the riot. Held that the several acts with regard to which the prisoners were charged did not fall within the provisions of s. 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that consequently under s. 235 of the Criminal Procedure Code the several sentences passed were strictly legal.—*Loke Nath Sircar v. Queen-Empress*, I. L. R., 11 Cal. 349. [Tottenham and Ghose, JJ. Mar. 6, 1885.]

FOUR persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon, who went with a warrant for his arrest accompanied by other persons, A and B, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon and another by means of a dangerous weapon on A. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section, and two months' rigorous imprisonment under the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on A, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other. Held that the offence of rioting was completed by the assault on A, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure. Held, further, that even if A had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused, taken separately, constituted offences under ss. 143 and 353 of the Penal Code, and, combined, an offence under s. 147; and under s. 235, sub-section 3 of the Code of Criminal Procedure, the accused might be charged with, and tried at one trial for, the offence under s. 147, and those under ss. 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code, as amended by s. 4 of Act VIII. of 1882, which limit had not been exceeded in the present case.—In the Matter of Chandra Kant Bhattacharjee v. Queen-Empress, I. L. R., 12 Cal. 495. [Mitter and Beverley, JJ. Dec. 11, 1885.]

**325.** Whoever, except in the case provided by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

**CHARGE.**—That you, on or about the day of , at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under s. 325 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].—Crim. Pro. Code (Act X. of 1882), Sec. V., Form XXVIII. (II.).

In their 1st Report the Indian Law Commissioners remark as follows: "An injury to the right hand may, in the case of a clerk, keep him from his work for 20 days, which, if it happened to the left hand, would be of no consequence. An injury to the foot may prevent one man from following his business in which walking is necessary, which, if it happened to another man in a sedentary employment, would not interrupt him at all. The proposed criterion is therefore unsatisfactory, but some criterion is necessary, and it is difficult to devise a better.

In their 1st Report, the Indian Law Commissioners also remark as follows: "We agree with Mr. Bacon in what we conceive to be his meaning as to the duty of the judge—that is to say, that he is not to trouble himself with seeking for direct proof of what the offender thought was likely to happen, but is to learn it from the nature of his act, taking him to have intended grievous hurt, or at least to have contemplated it as likely to occur, where he did what every body knows is likely to cause grievous hurt, and the more certainly drawing his conclusion, when there is evidence of previous enmity against the party who has suffered. If the act was such that nothing more than simple hurt could reasonably be thought likely to ensue from it, then, although grievous hurt may unexpectedly have ensued, it would be his duty to convict the offender of simple hurt only under ol. 323, judging that grievous hurt was not in contemplation; for, according to ol. 322, a person can be convicted of grievous hurt only when the result and the intention correspond, or when grievous hurt has been suffered from an act which was intended to cause grievous hurt, though it may be of a different kind."

The offence of voluntarily causing grievous hurt is punishable by imprisonment, to which fine may be added; and not imprisonment or fine.—Queen v. Menazoodin and another, 2 W. R. 33. [Kemp and Glover, JJ. Feb. 6, 1864.]

A DISABILITY for 20 days constitutes grievous hurt. A disability for a fortnight is punishable for voluntarily causing hurt.—Queen v. Bishnooram Surma and another, 1 W. R. 9. [Kemp and Glover, JJ. Aug. 30, 1864.]

The offence of voluntarily causing grievous hurt is punishable, not by fine alone, but by imprisonment, the offender being also liable to fine.—Queen v. Sharoda Peshagur and another, 2 W. R. 32. [Kemp and Glover, JJ. Feb. 3, 1865.]

WHEN there is neither intention, knowledge, nor likelihood, that the injury inflicted in an assault will, or can, cause death, the offence is not culpable homicide not amounting to murder, but grievous hurt.—Queen v. Megha Meeah *alias* Juckon Meeah, 2 W. R. 39. [Kemp and Glover, JJ. Mar. 8, 1865.]

In cases of hurt or grievous hurt, the question should be considered as to who was the aggressor, and whether the offence was committed in the exercise of the right of private defence.—Queen v. Sohun and another, 2 W. R. 59. [Campbell and Jackson, JJ. April 10, 1865.]

HELD by the majority of the Court (Seton-Karr, J.) dissenting that the offence of administering deleterious drugs, when life was not endangered, is punishable under s. 323, Penal Code, and not as for grievous hurt under s. 325.—Queen v. Joygopal *alias* Janglee, 4 W. R. 4. [Loch, Kemp, and Seton-Karr, JJ. Sep. 8, 1865.]

THE amount of punishment for cutting off a wife's nose for intriguing with another man depends on the time of the commission of the grievous hurt, whether, at the instant or long after, the husband found himself dishonoured.—Queen v. Sulamat Russoca, 4 W. R. 17. [Glover, J. Oct. 24, 1865.]

A SESSIONS Judge has no authority to interfere and direct a commitment in the case of a conviction for assault under s. 352, or of hurt under s. 323 of the Penal Code, both of them being offences triable by the Subordinate Court. When the result of a joint attack by several persons on one party is fracture of the arm of the party assaulted, the

offence committed is grievous hurt, and not assault; and as the attack was made in furtherance of a common object, all are equally guilty of the same offence.—*Queen v. Ramtohal Sing and others*, 5 W. R. 12. [Kemp and Glover, JJ. Jan. 16, 1866.]

WHERE bone-fractures have been caused in addition to other injuries, the offence committed is grievous hurt triable by a Court of Session, and not hurt cognizable by a Magistrate.—*Queen v. Ramtahal Singh and another*, 5 W. R. 65. [Jackson and Glover, JJ. April 4, 1866.]

THE prisoners having abetted an assault, and murder having been committed, held, under the peculiar circumstances of the case, that they were guilty of abetment of grievous hurt, and not abetment of murder.—*Queen v. Goluck Chung and others*, 5 W. R. 75. [Campbell and Macpherson, JJ. April 28, 1866.]

WHERE, in a case of robbery attended with death, there was no intention of causing death or such bodily injury as was likely to cause death, the conviction was altered from voluntarily causing hurt in committing robbery to voluntarily causing grievous hurt in committing robbery.—*Queen v. Chakor Haree and others*, 6 W. R. 16. [Kemp and Seton-Karr, JJ. June 30, 1866.]

WHERE A ordered B and C to seize and forcibly take D in the contemplation of an assault upon D, and D was so beaten and tortured as to have died in consequence, held that A was guilty at least of abetting the commission of voluntarily causing grievous hurt.—*Queen v. Doorgessur Surmah*, 7 W. R. 61. [Hobhouse, J. April 30, 1867.]

To establish a charge of grievous hurt, it is not necessary to prove that the accused struck the complainant so severely as to endanger the latter's life.—*Queen v. Purmanund Dehulia alias Purneshur*, 18 W. R. 22. [Glover, J. June 25, 1872.]

THE High Court, in exercise of the powers conferred on it by s. 280 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 423 of the new Code of Criminal Procedure (Act X. of 1882), altered the conviction in this case by the Sessions Judge from grievous hurt into one for murder, and enhanced the punishment accordingly.—*Queen v. Saffiruddi Palwan and another*, 22 W. R. 5; 13 B. L. R. Ap. 23. [Kemp and Birch, JJ. April 22, 1874.]

WHERE a prisoner was charged under ss. 304, 325, and 323 of the Penal Code, and the jury brought in a verdict of guilty under s. 325, held that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322 with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—*Queen v. Lukhinarain Agoori*, 23 W. R. 61. [Jackson and McDonell, JJ. April 8, 1875.]

To make out the offence of voluntarily causing grievous hurt under s. 325, Penal Code, there must be some specific hurt, voluntarily inflicted, and coming within some of the eight kinds enumerated in s. 320.—*Queen v. Budri Roy*, 23 W. R. 65. [Jackson and McDonell, JJ. April 23, 1875.]

AN accused struck a woman, carrying an infant in her arms, violently over head and shoulders. One of the blows fell on the child's head, causing death. Held that the accused had committed hurt on the infant under circumstances of sufficient aggravation to bring the offence within the definition of grievous hurt.—*In re Empress v. Sahae Rao*, I. L. R., 3 Cal. 623; 2 C. L. R. 30. [Markby and Prinsep, JJ. April 18, 1878.]

B VOLUNTARILY caused hurt to N, who was suffering from spleen-disease, knowing himself to be likely to cause grievous hurt, but without the intention of causing death, or causing such bodily injury as was likely to cause death, or the knowledge that he was likely by his act to cause death, and caused grievous hurt to N, from which N died. Held that B ought not to be convicted under s. 304A of the Penal Code of causing death by negligence, but under s. 325 of that Code of voluntarily causing grievous hurt.—*Empress v. O'Brien*, I. L. R., 2 All. 766. [Stuart, C.J., and Spankie, J. Mar. 6, 1880.]

THE accused were charged under s. 149, coupled with s. 325, of the Penal Code, with, while being members of an unlawful assembly, committing grievous hurt. The jury disbelieved the evidence as to the unlawful assembly, but unanimously found two of the accused guilty of grievous hurt under s. 325. Held that such verdict was, under s. 457 of the Code of Criminal Procedure, 1872 (corresponding with s. 238 of the new Code of Criminal Procedure, 1882), legally sustainable, although that offence did not form the subject of a separate charge. S. 457 enables a verdict to be given on some of the facts which are a component part of the original charge, provided that those facts constitute a minor

offence. It is only in a case where the jury are not unanimous that a Court may require them to retire for further consideration. Where a verdict is unanimous, it must be received by the Judge, unless contrary to law. Where a Judge dissents from the unanimous finding of a jury given in accordance with the law, the only procedure open to him to follow is that laid down in the fifth clause of s. 263 of the Code of Criminal Procedure (Act X. of 1872), corresponding with s. 307 of the new Code of Criminal Procedure (Act X. of 1882).—*Govt. of Bengal v. Mahamdi*, I. L. R., 5 Cal. 871; 6 C. L. R. 349. [Morris and Prinsep, JJ. May 20, 1880.]

WHERE a person struck another a blow which caused death, without any intention of causing death, or of causing such bodily injury as was likely to cause death, or the knowledge that he was likely by such act to cause death, but with the intention of causing grievous hurt, *held* that the offence of which such person was guilty was not the offence of causing death by a rash act, but the offence of voluntarily causing grievous hurt. *Nidamarti Nagabhushanam* (7 Mad. H. C. R. 119), *Queen v. Pemkoer* (5 N. W. P. 38), *Queen v. Man* (5 N. W. P. 235), *Empress v. Ketabdi Mundul* (I. L. R., 4 Cal. 764), *Empress v. Fox* (I. L. R., 2 All. 522), *Empress v. O'Brien* (I. L. R., 2 All. 766), followed. The offences of murder, culpable homicide not amounting to murder, and causing death by a rash or negligent act, distinguished.—*Empress v. Idu Beg*, I. L. R., 3 All. 776. [Straight, J. Aug. 12, 1881.]

A MEMBER of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt.—*Empress v. Ram Partab*, I. L. R., 6 All. 121. [Straight, J. Dec. 5, 1883.]

THREE persons, who were convicted, (i) of riot under s. 147 of the Penal Code, (ii) of causing grievous hurt in the course of such riot, were respectively sentenced to six months' rigorous imprisonment under s. 147, and three months' rigorous imprisonment under s. 325. *Held* by Petheram, C.J., and Straight and Tyrrell, JJ., that inasmuch as the evidence upon the record showed that the three prisoners had committed individual acts of violence with their own hands, which constituted distinct offences of causing grievous hurt or hurt separate from, and independent of, the offence of riot, which was already completed, and the fact of the riot was not an essential portion of the evidence necessary to establish their legal responsibility under s. 325 of the Penal Code, the separate sentences passed under ss. 147 and 325 were not illegal. *Queen-Empress v. Ram Partab* (I. L. R., 6 All. 121) distinguished. *Per* Brodhurst, J., that the evidence showed that only one of the three prisoners had caused grievous hurt with his own hands, and that the others could only be properly convicted of that offence under the provisions of s. 149 of the Penal Code, but that the separate sentences passed under ss. 147 and 325 were not illegal. *Queen-Empress v. Dungar Singh* (I. L. R., 7 All. 29) followed. Also *per* Brodhurst, J.—Ill. g of s. 235 of the Criminal Procedure Code does not apply merely to the case of persons who, in addition to the offence of rioting, have, with their own hands, committed the further offences of voluntarily causing grievous hurt, and of assaulting a public servant when engaged in suppressing a riot; and the convictions referred to in the illustration relate especially to convictions obtained under the provisions of s. 149 of the Penal Code.—*Queen-Empress v. Ram Sarup*, I. L. R., 7 All. 757. [Petheram, C.J., and Straight, Brodhurst, and Tyrrell, JJ. May 12, 1885.]

326. Whoever, except in the case provided by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing, or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Voluntarily causing grievous hurt by dangerous weapons or means.*

*Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Summons Not bailable.*

THE offence of administering deleterious drugs, when life was not endangered, is punishable under s. 328, Penal Code, and not as for grievous hurt under s. 326.—*Queen v. Joygopal alias Junglee*, 4 W. R. 4. [Kemp and Seton-Karr, JJ. Sep. 8, 1865:]

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**327.** Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

WHERE a person scourged another with nettles in order to extract property from the sufferer, and the Magistrate tried the case as one of hurt (under s. 323, Penal Code) and extortion (s. 384), although the accused ought to have been charged under s. 327, and tried by the Court of Session, the High Court declined to interfere under s. 404, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 439, new Code of Criminal Procedure (Act X. of 1882), and direct a new trial, believing that substantial justice had been done in the case.—*Tarinee Prosaud Banerjee and another, Petitioners*, 18 W. R. 8. [Kemp and Glover, JJ. June 14, 1872.]

Ditto.

**328.** Whoever administers to, or causes to be taken by, any person any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

THE words "or other thing" in s. 328 of the Penal Code must be referred to the preceding words, and be taken to mean "unwholesome thing," and not other thing simply.—*Jotee Ghorace, Appellant*, 1 W. R. 7. [Kemp and Glover, JJ. Aug. 18, 1864.]

THE offence of administering deleterious drugs, when life was not endangered, is punishable under s. 328, Penal Code, and not as for grievous hurt under s. 326.—*Queen v. Joygopal alias Jungle*, 4 W. R. 4. [Kemp and Seton-Karr, JJ. Sep. 8, 1865.]

HELD that a person who placed in his toddy-pots juice of the milk-bush, knowing that, if taken by a human being, it would cause injury, and with the intention of thereby detecting an unknown thief who was in the habit of stealing the toddy from such pots, and which toddy was drunk by, and caused injury to, certain soldiers who purchased it from an unknown vendor, was rightly convicted, under s. 328 of the Penal Code, of "causing to be taken an unwholesome thing with intent to injure," and that s. 81, which says that, "if an act be done without any criminal intention to cause harm, it is not an offence," did not apply to the case.—*Reg. v. Dhaniá Daji*, 5 Bom. H. C. R. 59. [Newton and Tucker, JJ. July 23, 1868.]

Ditto.

**329.** Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with transportation for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.



**330.** Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

*Illustrations.*

(a.) A, a police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(b.) A, a police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(c.) A, a revenue-officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(d.) A, a zamindar, tortures a raiyat in order to compel him to pay his rent. A is guilty of an offence under this section.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

To bring a case under s. 330 of the Penal Code it must be proved that the hurt to the complainant was caused with intent to extort a confession of *some offence or misconduct punishable under the Penal Code*. That section, therefore, does not apply to a case where the confession extorted had reference to a charge of witchcraft.—*Queen v. Baboo Moondu and others*, 13 W. R. 23. [Kem and Jackson, JJ. Feb. 12, 1870.]

A CHARGE may be made under s. 330 of causing hurt for the purpose of extorting information which might lead to the detection of an offence, even if the supposed offence has not been committed. The offence which that section intended to describe is that of inducing a person by hurt to make a statement or a confession, having reference to an offence or misconduct; and whether that offence or misconduct has been committed is wholly immaterial.—*Queen v. Nim Chand Mookerjee*, 20 W. R. 41. [Markby and Birch, JJ. June 27, 1873.]

**331.** Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

**332.** Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or at-

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

SS. 333-335.] *OFFENCES AFFECTING THE HUMAN BODY.* [CH. XVI.]

tempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Any Mag.  
Uncog.  
Summons.  
Bailable.  
Comp.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

CAUSING hurt on grave and sudden provocation to the person giving the provocation is chargeable as an offence under s. 334, and not under s. 324 of the Penal Code.—Reg. v. Bhala Chula, 1 Bom. H. C. R. 17. [Sausse, C.J., and Forbes and Tucker, JJ. July 29, 1863.]

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Summons.  
Bailable.  
Comp. when  
permission is  
given by  
Court before  
which prose-  
cution is  
pending.

335. Whoever "voluntarily" \* causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

*Explanation.*—The last two sections are subject to the same provisos as exception 1, section 300.

A PERSON who, by a single blow with a deadly weapon, kills another entering at dead of night into a dark room where he and his wife were sleeping separately for the purpose of having criminal intercourse with her, *held* guilty of causing grievous hurt on grave and sudden provocation.—Queen v. Chullundee Poramanick, 3 W. R. 55. [Kemp and Seton-Karr, JJ. July 26, 1865.]

THE amount of punishment for cutting off a wife's nose for intriguing with another man depends on the time of the commission of the grievous hurt, whether at the instant or long after the husband found himself dishonoured.—Queen v. Sulamut Russooa, 4 W. R. 17. [Glover J. Oct. 24, 1865.]

CAUSING grievous hurt on grave and sudden provocation is punishable under s. 335 of the Penal Code without any intention or knowledge of likelihood of causing such hurt.—Queen v. Umbica Tantinee and another, 4 W. R. 21. [Loch and Glover, JJ. Nov. 7, 1865.]

WHERE a prisoner was charged under the Penal Code, ss. 304, 325, and 323, and the jury brought in a verdict of guilty under s. 325, *held* that he was not acquitted of grievous hurt, but found guilty of the offence described in s. 322, with the extenuating circumstances which would confine the punishment within the limits specified in s. 335.—Queen v. Lukhinarain Agoori, 23 W. R. 61. [Jackson and McDonell, JJ. April 8, 1875.]

\* The word quoted has been inserted by Act VIII. of 1882, s. 8.

**336.** Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

Punishment for act endangering life or personal safety of others.

Any Mag. Cognizable. Summons. Bailable. Not comp.

**BOATMEN** who ply an unseaworthy vessel, whereby the lives of passengers for hire are endangered, should be charged under s. 282, and not under s. 336.—*Reg. v. Khodá Jāgṭā* and others, 1 Bom. H. C. R. 137. [Forbes and Couch, JJ. Jan. 8, 1864.]

**337.** Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Causing hurt by act endangering life or personal safety of others.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Comp. when permission is given by Court before which prosecution is pending.

S. 304A of the Penal Code does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result; and if such knowledge can be imputed, the result is not to be attributed to mere rashness. If it cannot be imputed, still the wilful offence does not take the character of rashness because its consequences have been unfortunate. Acts, probably or possibly involving danger to others, but which in themselves are not offences, may be offences under ss. 336, 337, 338, or 304A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with regard to the knowledge, or means of knowledge, of the offender, and placed in their appropriate place in the class of offences of the same character.—*Empress v. Ketabdi Mundul*, 1. L. R., 4 Cal. 764; 2 C. L. R. 507. [Ainslie and Broughton, JJ. Feb. 26, 1879.]

**338.** Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

Causing grievous hurt by act endangering life or personal safety of others.

Ditto.

**DEFENDANT** was convicted under s. 338 of the Penal Code of causing grievous hurt. The evidence showed that the defendant was being driven in a carriage to her house through the streets of the town between the hours of 7 and 8 P.M.; that the carriage was being driven at an ordinary pace and in the middle of the road; that the night was dark and the carriage without lamps, but that the horse-keeper and coachman were shouting out to warn foot-passengers; that the defendant's carriage came into contact with the complainant's father, an old deaf man, and that complainant's father was thereupon knocked down, run over, and killed. *Held*, upon a reference, that the question for the Court was whether there was any evidence that the death of the deceased was induced by an act negligently and rashly directed by the accused, and that there was no such evidence. The conviction was accordingly quashed.—*Pro.*, Aug. 17, 1871, 6 Mad. H. C. R. Ap. 31.

S. 304A of the Penal Code does not apply to a case in which there has been the voluntary commission of an offence against the person. If a man intentionally commits such an offence, and consequences beyond his immediate purpose result, it is for the Court to determine how far he can be held to have the knowledge that he was likely by such act to cause the actual result; and if such knowledge can be imputed, the result is not to be attributed to mere rashness. If it cannot be imputed, still the wilful offence does not take the character of rashness, because the consequences have been unfortunate. Acts, probably or possibly, involving danger to others, but which in themselves are not offences, may be offences under ss. 336, 337, 338, or 304A, if done without due care to guard against the dangerous consequences. Acts which are offences in themselves must be judged with

regard to the knowledge, or means of knowledge, of the offender, and placed in their appropriate place in the class of offences of the same character.—*Empress v. Ketabdi Mundul*, I. L. R., 4 Cal. 764; 2 C. L. R. 507. [*Ainslie and Broughton*, JJ. Feb. 26, 1879.]

## OF WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT.

### REPORT OF THE INDIAN LAW COMMISSIONERS ON WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT.

By wrongful restraint we mean the keeping a man out of a place where he wishes to be and has a right to be. Wrongful confinement, which is a form of wrongful restraint, is the keeping a man within limits out of which he wishes to go, and has a right to go.

The offence of wrongful restraint, when it does not amount to wrongful confinement, and when it is not accompanied with violence, or with the causing of bodily hurt, is seldom a serious offence, and we propose, therefore, to visit it with a light punishment.

The offence of wrongful confinement may be also a slight offence. But, when attended by aggravating circumstances, it may be one of the most serious that can be committed.

One aggravating circumstance is the duration of the confinement. Confinement for a quarter of an hour may sometimes be a mere frolic, which would deserve only a nominal punishment, which, indeed, might be so harmless as not to amount to an offence. But wrongful confinement continued during

many days will always be a most serious offence. We have attempted to frame the law on this subject in such a manner as to give the offender a strong motive for abridging the detention of his prisoner. Another aggravating circumstance is the circumstance that the offender persists in wrongfully confining a person notwithstanding an order issued by a competent authority for the liberation or production of that person. The mode in which these orders are to be issued will be set forth in the Code of Procedure. A third aggravating circumstance is the circumstance that the offender uses criminal confinement for purposes of extortion. For all these aggravated forms of wrongful confinement we have provided severe punishments.

We have also provided a separate punishment for a person, who, while detaining another in wrongful confinement, omits to supply his prisoner with every thing necessary to health, ease, and comfort. The effect of this provision is that a person who wrongfully confines another will be answerable for any bodily hurt which he may cause by wrongfully omitting so to supply his prisoner.

**339.** Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed is said wrongfully to restrain that person.

*Exception.*—The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct is not an offence within the meaning of this section.

#### *Illustration.*

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

WHERE a police-officer refused to let a person go home until he had given bail, he was held to have been guilty of wrongful restraint under s. 339 of the Penal Code.—*Sheo Saran Sahai v. Mahomed Fazil Khan*, 10 W. R. 20. [*Loch and Glover*, JJ. July 17 1868.]

**340.** Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said “wrongfully to confine” that person.

## Illustrations

(a.) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(b.) A places men with fire-arms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the building. A wrongfully confines Z.

THE plaintiff, accused of a certain offence for which he was not arrestable without warrant, received a letter from the District Superintendent of Police, directing him to proceed to Rassulkonda to present himself before a Magistrate. Two constables were directed to accompany him to prevent him from speaking to any one. They, in fact, accompanied him to the place. The High Court held that this amounted to wrongful confinement, and awarded Rs. 200 damages with costs to be paid by the District Superintendent of Police.—Parankusam Narasaya Pantulu, Appellant, v. Captain R. A. C. Stuart and another, Respondents, 2 Mad. H. C. R. 396. [Holloway and Innes, JJ. May 27, 1865.]

By English law, to constitute the injury of false imprisonment, two points are requisite: (1) the detention of the person, and (2) the unlawfulness of such detention. Every confinement of the person is an imprisonment, whether it be in a common prison, or in a private house, or in the stocks, or even by forcibly detaining one in the public streets. Unlawful or false imprisonment consists in such confinement or detention without sufficient authority; false imprisonment also may arise by executing a lawful warrant or process at an unlawful time, as on a Sunday.—Black. Com., vol. 3, p. 136.

**341.** Whoever wrongfully restrains any person shall be punished with Any Mag. Cognizable. Summons. Bailable. Comp.  
Punishment for wrongful simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

WHERE the accused prevented the complainants from proceeding in a certain direction with their carts, and exacted from them a sum of money on a false plea, *held* that the accused were guilty of wrongful restraint, and not of theft.—Jowahir Shah v. Gridharee Chôwdhry and others, 10 W. R. 35. [Jackson and Hobhouse, JJ. Sep. 9, 1868.]

WHERE complainant had, for the purpose of removal, placed certain goods upon a cart, and accused came and unyoked the bullocks, and turned the goods off the cart on to the road, and complainant thereupon went away at once, leaving them there, *held* that, under these circumstances, a conviction under s. 341 of the Penal Code could not be sustained; but that there was such "mischief" as to bring the offence within s. 425. *Held* also that s. 425 does not necessarily contemplate damage of a destructive character. It requires merely that there should be an invasion of right, and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it.—In the Matter of the Petition of Juggeshwar Dass; Joggeswar Dass v. Koylash Chunder Chatterjee, I. L. R., 12 Cal. 55. [Garth, C J., and Prinsep, Wilson, Field, and O'Kinealy, JJ. Sep. 4, 1885.]

**342.** Whoever wrongfully confines any person shall be punished with Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Summons. Bailable. Comp.  
Punishment for wrongful imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Held by the majority of the Court (Kemp. J., dissenting) that the prisoners were rightly convicted of wrongful confinement of a woman, the facts of the case showing that she never went willingly to the house of the prisoners, and was not a willing inmate while she was there.—Queen v. Ameer Daraz and another, 4 W. R. 3. [Kemp and Seton-Karr, JJ. Sep. 7, 1865.]

THE time during which a party is kept in wrongful confinement is immaterial, except with reference to the extent of punishment. In no case is a police-officer justified by s. 152, Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 61, new Code

of Criminal Procedure (Act X. of 1882), in detaining a person for a single hour, except upon some reasonable ground justified by all the circumstances of the case.—*Queen v. Suprosunno Ghosaul*, 6 W. R. 88. [Kemp and Markby, JJ. Dec. 10, 1866.]

THE High Court declined to interfere with an order of a Deputy Magistrate discharging an accused without trial in a case under s. 342 of the Penal Code, because the complainant and his witnesses were not present.—*Santoo Mundle and others v. Abdool Biswas and others*, 13 W. R. 35; 7 B. L. R. 8n. [Loch and Hobhouse, JJ. Mar. 2, 1870.]

FOUR persons, two of them police-constables and two village-officers, were convicted of wrongful confinement and abetment thereof. The defendants, the village-officers, maliciously directed the arrest of certain persons for resisting the detention of certain pigs found trespassing. *Held* a good conviction.—*Pro.*, June 13, 1873, 5 Mad. H. C. R. Ap. 24.

IN a case of a police-officer charged under s. 342 of the Penal Code, where there was no malice, no intention of doing an act of the nature spoken of in s. 339 or 340, and no voluntary obstruction or restraint, though there was probably excessive and mistaken exercise of powers not civilly excusable in a police-officer, the facts were held not to amount to the criminal offence of wrongful restraint.—*Budrool Hossein*, Sub-Inspector, Petitioner, 24 W. R. 51. [Jackson and McDonell, JJ. Sep. 1, 1875.]

S. 54 of the Criminal Procedure Code (Act X. of 1882) authorizes the arrest by the police, not only of persons against whom a reasonable complaint has been made or a reasonable suspicion exists of their having been concerned in a "cognizable offence," but also of persons against whom "credible information" to that effect has been received. *Seemle*.—Where the arrest is legal, there can be no guilty knowledge "superadded to an illegal act," such as it is necessary to establish against the accused to justify a conviction under s. 220 of the Penal Code. It is only where there has been an excess, by a police-officer, of his legal powers of arrest, that it becomes necessary to consider whether he has acted corruptly or maliciously, and with the knowledge that he was acting contrary to law.—*Queen-Empress v. Amarsang Jethá*, I. L. R., 10 Bom. 506. [Birdwood and Jardine, JJ. Dec. 7, 1885.]

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

**343.** Whoever wrongfully confines any person for three days or more  
Wrongful confinement for three or more days. shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

THE prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498 of the Penal Code, and for wrongful confinement of her under s. 343, *held* that both sentences could not stand, and that as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.—*Queen v. Ishwar Chunder Jogi*, W. R. Sp. 21. [Loch and Seton-Karr, JJ. April 12, 1864.]

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

**344.** Whoever wrongfully confines any person for ten days or more  
Wrongful confinement for ten or more days. shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

FINE alone is not a legal sentence for a prisoner convicted under s. 344 of the Penal Code.—*Reg. v. Bahirjee bin Krishnáji*, 1 Bom. H. C. R. 39. [Newton and Tucker, JJ. Aug. 12, 1863.]

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Summons.  
Bailable.  
Not comp.

**345.** Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this Code.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
or 2nd class.  
Cognizable.

**346.** Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such

confinement may not be known to, or discovered by, any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Summons.  
Bailable.  
Not comp.

In order to render a person liable under s. 346 of the Penal Code, it must be shown that the wrongful confinement was of such a nature as to indicate an intention that the person confined should not be discovered.—In the Matter of the Petition of Sreenath Banerjee, I. L. R., 9 Cal. 221. [McDonell and O'Kineally, JJ. Aug. 7, 1882.]

### 347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined, or any person interested in such person, to do anything illegal, or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for the purpose of extorting property or constraining to an illegal act.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

to do anything illegal, or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

### 348. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined, or any person interested in the person confined, to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for the purpose of extorting confession, or of compelling restoration of property.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Summons.  
Bailable.  
Not comp.

of an offence or misconduct, or for the purpose of constraining the person confined, or any person interested in the person confined, to restore, or to cause the restoration of, any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

WHERE a constable and others enter a house and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others.—Government v. Mahomed Hossein and others, 5 W. R. 49. [Norman and Campbell, JJ. Mar. 5, 1866.]

## OF CRIMINAL FORCE AND ASSAULT.

### 349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion, in one of the three ways hereinafter described:

Force.

2. other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion, in one of the three ways hereinafter described:

motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion, in one of the three ways hereinafter described:

First.—By his own bodily power.

*Secondly.*—By disposing any substance in such a manner that the motion, or change or cessation of motion, takes place without any further act on his part or on the part of any other person.

*Thirdly.*—By inducing any animal to move, to change its motion, or to cease to move.

**350.** Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause, injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

*Illustrations.*

(a.) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent, in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear, or annoyance to Z, A has used criminal force to Z.

(b.) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, A has used criminal force to Z.

(c.) Z is riding in a palanquin. A, intending to rob Z, seizes the pole, and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z, and as A has acted thus intentionally, without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(d.) A intentionally pushes against Z in the street. Here A has, by his own bodily power, moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z; and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy Z, he has used criminal force to Z.

(e.) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water, and dash up the water against Z's clothes, or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten, or annoy Z, he has used criminal force to Z.

(f.) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten, or annoy her, he has used criminal force to her.

(g.) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear, or annoyance to Z, A has used criminal force.

(h.) A incites a dog to spring upon Z, without Z's consent. Here, if A intends to cause injury, fear, or annoyance to Z, he uses criminal force to Z.

THE following cases of assault under the English law amount to the use of criminal force under the Penal Code: "A master taking indecent liberties with a female scholar, without her consent, though she does not resist (Reg. v. Day, 9 C. and P. 722); a medical



man unnecessarily stripping a female patient naked, under the pretence that he cannot otherwise judge of her illness, if he himself take off her clothes (Reg. v. Rosinski, 1 Mood. C. C. 12); parish-officers cutting off the hair of a pauper in the poorhouse by force and against her will (Forde and Skinner, 4 C. and P. 239); taking a new-born child from the mother, under pretence of taking it to an institution to be nursed, and instead, putting it into a bag, and hanging it on some palings by the wayside (Reg. v. March, 1 C. and K. 496); spitting in a man's face (6 Mod. 149); striking a horse upon which a man is riding, and thus causing him to be thrown (1 Mod. 24; W. Jones, 414); and every touching or laying hold (however trifling) of another's person or clothes in an angry, revengeful, rude, insolent, or hostile manner (1 Hawk. c. 62, s. 2; see also Rowlin v. Till, 3 M. and W. 28; Coward v. Buddoley, 4 H. and N. 478). All cases of trifling assault will be met by s. 95, Penal Code.—Starling's Indian Criminal Law and Procedure, 3rd ed., p. 298.

**351.** Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

*Explanation.*—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault.

#### Illustrations.

(a.) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(b.) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(c.) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture unaccompanied by any other circumstances might not amount to an assault, the gesture explained by the words may amount to an assault.

**352.** Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

*Explanation.*—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence,—or

If the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant,—or

If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence, is a question of fact.

ANY gestures calculated to excite in the party threatened a reasonable apprehension that the party threatening intends immediately to offer violence, or, in the language of the Penal Code, is "about to use criminal force," to the person threatened, constitute, if coupled with a present ability to carry such intent into execution, an assault in law. Mere words do not amount to an assault, but the words which the party threatening uses at the time may either give his gestures such a meaning as may make them amount to an assault, or, on the other hand, may prevent them from being held to amount to an assault. In

order to have this latter effect the words must be such as clearly to show the party threatened that the party threatening has no present intention to use immediate criminal force.—*Camá (A. C.) v. Morgan (H. F.)*, 1 Bom. H. C. R. 205. [Arnould, Acting C.J., and Newton and Tucker, JJ. Sep. 28, 1864.]

A CHARGE of assault and theft should not be dismissed for default of complainant's attendance.—*Queen v. Jodoo Paharee*, 1 W. R. 25. [Kemp and Glover, JJ. Nov. 18, 1864.]

WHERE, of several persons constituting an unlawful assembly, some only are armed with sticks, and A, one of them, is not so armed, but picks up a stick, and uses it, B (the master of A), who gave a general order to beat, is guilty of abetting the assault made by A.—*Queen v. Rasookoolah and others*, 12 W. R. 51. [Glover and Mitter, JJ. Sep. 2, 1869.]

A PERSON tried and acquitted on a charge of using criminal force under s. 252 (which includes the offence of battery) cannot be tried in respect of the same criminal matter on a charge of hurt.—*Kaptan v. Smith (G. M.)*, 16 W. R. 3; 7 B. L. R. Ap. 25. [Bayley and Paul, JJ. June 7, 1871.]

IN a case of assault, a sentence inflicting a fine of Rs. 50, and awarding imprisonment for one month in default of payment of the fine, is illegal, with reference to ss. 65 and 352 of the Penal Code.—*Jehan Buksh and another, Petitioners*, 16 W. R. 42. [Kemp and Ainslie, JJ. Sep. 2, 1871.]

THE rules or executive orders of Government printed at pages 26 and 27 of Mr. Nairne's Revenue Handbook have not the force of law, and a public servant, acting in obedience thereto, cannot be considered as acting in execution of his duty as a public servant, if his act is otherwise illegal. Accordingly, where, on a complaint by a sepoy in the Revenue Department deputed by a forest settlement-officer to impress some carts for the use of the latter, that the accused assaulted and prevented him from seizing his cart, a Magistrate of the First Class convicted the accused under s. 353 of the Penal Code for assaulting and obstructing a public servant in the execution of his duty, and sentenced the accused to undergo twenty-one days' rigorous imprisonment, *held* that the conviction under s. 353 of the Penal Code should be set aside. The only offence of which, upon the evidence, the accused was guilty, was that of simple assault under s. 352 of the Penal Code.—*In re the Petition of Rakhmaji, I. L. R.*, 9 Bom. 558. [Nánábhái Haridás and Wedderburn, JJ. July 6, 1885.]

BLACKSTONE thus defines assault under the English law: "It is an attempt or offer to beat another, without touching him; as if one lifts up his cane, or his fist, in a threatening manner at another; or strikes at him, but misses him: this is an assault, *insultus*, which Finch describes to be an unlawful setting upon one's person; and though no actual suffering is proved, yet the party injured may have redress by action for damages as a compensation for the injury."—Black Com., vol. 3, p. 127.

**353.** Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

WHERE substantially only one offence has been committed, the several acts which, taken together, constitute that offence, cannot legally be treated as separate offences, and the prisoner cannot legally be sentenced in respect of these as well as in respect of the principal offence.—*Queen v. Chunder Kant Lahoree and others*, 12 W. R. 2; 3 B. L. R. A. Cr. 14.\* [Macpherson and Jackson, JJ. June 11, 1869.]

A COLLECTORATE *piyada*, who had been deputed to keep the peace during a distraint, was assaulted by the prisoners while on his road to execute the order with which he had been entrusted, the prisoners attempting to deprive him of his *parwāna*. *Held* that they

\* In the B. L. R. the name of the case is "*Queen v. Kalisankar Sandyal and others*."

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

were rightly convicted under s. 353 of assaulting a public servant while in the execution of his duty.—*Queen v. Methi Mullah and others*, 13 W. R. 49. [Kemp and Jackson, JJ. Mar. 26, 1870.]

THE rules or executive orders of Government printed at pages 26 and 27 of Mr. Nairne's Revenue Handbook have not the force of law, and a public servant, acting in obedience thereto, cannot be considered as acting in execution of his duty as a public servant, if his act is otherwise illegal. Accordingly, where, on a complaint by a sepoy in the Revenue Department deputed by a forest settlement-officer to impress some carts for the use of the latter, that the accused assaulted and prevented him from seizing his cart, a Magistrate of the first class convicted the accused under s. 353 of the Penal Code for assaulting and obstructing a public servant in the execution of his duty, and sentenced the accused to undergo twenty-one days' rigorous imprisonment, *held* that the conviction under s. 353 of the Penal Code should be set aside. The only offence of which, upon the evidence, the accused was guilty, was that of simple assault under s. 352 of the Penal Code.—*In re the Petition of Rakhmaji*, I. L. R., 9 Bom. 558. [Nánábhái Haridás and Wedderburn, JJ. July 6, 1885.]

FOUR persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon who went with a warrant for his arrest accompanied by other persons, A and B, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon and another by means of a dangerous weapon on A. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section, and two months' rigorous imprisonment under the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on A, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other. *Held* that the offence of rioting was completed by the assault on A, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure. *Held*, further, that even if A had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused, taken separately, constituted offences under ss. 143 and 353 of the Penal Code, and combined, an offence under s. 147; and under s. 235 sub-section 3 of the Code of Criminal Procedure, the accused might be charged with, and tried at one trial for, the offence under s. 147, and those under ss. 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code, as amended by s. 4 of Act VIII. of 1882, which limit had not been exceeded in the present case.—*In the Matter of Chandra Kant Bhattacharjee*; *Chandra Kant Bhattacharjee v. Queen-Empress*, I. L. R., 12 Cal. 495. [Mitter and Beverley, JJ. Dec. 11, 1885.]

A WARRANT issued for the arrest of a debtor under the provisions of s. 251 of the Civil Procedure Code was initialled by the Munsarim of the Court, sealed with the seal of the Court, and delivered to the proper officer for execution. The debtor forcibly resisted the officer, and was tried and convicted, under s. 353 of the Penal Code, of assaulting a public servant in the execution of his duty as such. In revision, it was contended, with reference to the requirements of s. 251 of the Civil Procedure Code, that the warrant of arrest, having been initialled only, was bad, and the officer could not legally execute it, and consequently no offence under s. 353 of the Penal Code had been committed. *Held* that this contention could not be allowed, and, although it was proper that the person signing a warrant should write his name in full, it could not be said that because the signature was confined to the initials of the name, it was not the duty of the officer to execute the warrant. *Held* also, with reference to s. 99 of the Penal Code, that the act of the accused did not cease to be an offence on the ground that it was done in the exercise of the right of private defence.—*Queen-Empress v. Janki Prasad*, I. L. R., 8 All. 293. [Oldfield, J. May 4, 1886.]

354. Whoever assaults or uses criminal force to any woman, intending to outrage, or knowing it to be likely that he will thereby outrage, her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or use of criminal force to woman with intent to outrage her modesty.

Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

**Ss. 355-361.] KIDNAPPING, ABDUCTION, SLAVERY, &c. [Ch. XVI.**

AN indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passions at all events, and in spite of all resistance.—*Empress v. Shankar*, 1. L. R., 5 Bom. 403. [Melvill and Nánábhái Huridas, JJ. Mar. 2, 1881.]

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Summons.  
Bailable.  
Comp.

**355.** Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Any Mag.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**356.** Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Any Mag.  
Cognizable  
Warrant.  
Bailable.  
Not comp.

**357.** Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Any Mag.  
Uncog.  
Summons.  
Bailable.  
Comp.

**358.** Whoever assaults or uses criminal force to any person on grave and sudden provocation given by that person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

*Explanation.*—The last section is subject to the same explanation as section 352.

**OF KIDNAPPING, ABDUCTION, SLAVERY, AND FORCED LABOUR.**

**Kidnapping.**

**359.** Kidnapping is of two kinds: kidnapping from British India, and kidnapping from lawful guardianship.

THIS offence may be committed on a child by removing that child out of the keeping of its lawful guardian or guardians. On a grown man it can only be committed beyond the limits of the Queen's territories, or by receiving him on board a ship for that purpose. The enticing a grown-up person by false promises to go from one place in the Queen's territories to another place also within those territories may be a subject for civil action, and under certain circumstances for a criminal prosecution, but it does not come under the head of kidnapping.—*Indian Law Commissioners' Report.*

**360.** Whoever conveys any person beyond the limits of British India without the consent of that person, or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

**361.** Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

*Explanation.*—The words “lawful guardian” in this section include any person lawfully entrusted with the care or custody of such minor or other person.

*Exception.*—This section does not extend to the act of any person who, in good faith, believes himself to be the father of an illegitimate child, or, who, in good faith, believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

A CHARGE of kidnapping from lawful guardianship should contain the name of the guardian.—Extract (para. 6) of letter No. 149 from Registrar, High Court, dated Feb. 16, 1866; 1 Wyman’s Rev., Civ., and Crim. Reporter, 16.

THE consent of a girl under 16 years, kidnapped or abducted to compel her marriage, does not affect the offence: nor is it necessary that the taking or enticing should be shown to be by means of force or fraud.—Queen v. Amgad Bugeah, 2 W. R. 61. [Glover, J. April 18, 1865.]

THE abduction of a minor girl under 16 years of age out of the custody of her lawful guardian is punishable under s. 361 of the Penal Code. It is not necessary to such a conviction that the abduction was forcible.—Queen v. Modhoo Paul, 3 W. R. 9. [Glover, J. May 9, 1865.]

THE consent of a kidnapped person is immaterial; and it is not necessary for a conviction under s. 361, Penal Code, that the taking or enticing should be shown to have been by means of force or fraud.—Queen v. Bhungee Ahur, 2 W. R. 5. [Glover, J. June 5, 1865.]

A PERSON, in carrying off, without the consent of her lawful guardian, a girl to whom he was betrothed by his father, who, after permitting her to reside occasionally in his house, suddenly changed his mind, and broke off the marriage, is guilty of kidnapping from lawful guardianship punishable under s. 363 of the Penal Code.—Queen v. Gooroodoss Rajbunsee, 4 W. R. 7; 5 Rev., Jud.; and Police Journal 149. [Kemp and Seton-Karr, JJ. Sep. 11, 1865.]

IN the case of a run-away, enticed after a voluntary abandonment of her home to emigrate, a charge of kidnapping from lawful guardianship cannot be sustained.—Queen v. Goudhurr Singh, 5 Rev., Jud., and Police Journal, 151. [Kemp, Seton-Karr and Glover, JJ. Sep. 12, 1865.]

To bring a case under s. 361 of the Penal Code, there must be a taking or enticing of a child out of the keeping of the lawful guardian without his consent.—Queen v. Gunder Singh, 4 W. R. 6. [Kemp and Glover, JJ. Sep. 12, 1865.]

UNDER s. 361 of the Penal Code (kidnapping from lawful guardianship), the consent of a minor is immaterial. nor do force and fraud form elements of the offence.—Queen v. Sookee, 7 W. R. 36. [Glover, J. Feb. 25, 1867.]

To support a conviction for kidnapping under ss. 361 and 363 of the Penal Code, it must be shown that the accused took or enticed away from lawful guardianship the person kidnapped.—Queen v. Neela Bebee and another, 10 W. R. 33. [Loch and Glover, JJ. Sep. 3, 1868.]

IF, knowing a girl has been kidnapped, a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code. Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent or guardian, or a jailor.—Queen v. Mirza Sikundur Bukhut, 3 N. W. P. 146. [Turner and Turubull, JJ. June 20, 1871.]

D S had two wives, N and J, by the latter of whom he had two daughters. In February 1876 he went with his wife, N, to a marriage in another village, leaving J and her two daughters at home. During the temporary absence of D S, J removed her two daughters to the house of her brother-in-law, M, and married the elder girl (aged 8 years) to one G, with the assistance of three other persons. The Chief Court held (1) that the word “woman” in s. 366 included a minor female; (2) that there was a kidnapping from the

lawful guardianship of D S within the meaning of ss. 361 and 366, notwithstanding the consent of the mother, J, to the girl's removal. *Per Smyth, J.*—Because the girl, during the temporary absence of the father, D S, continued in his possession and under his control as her lawful guardian, and was not under the guardianship of her mother, J. *Per Plowden, J.*—Because the consent of a mere custodian in breach of the trust reposed by the person from whom the right to custody is derived is not the consent of the guardian in whose keeping the minor still continues through the custodian.—*Dhera Singh v. Mussamat Kahno*, Panj. Rec., No. 8 of 1878.

A CHILD under ten years of age is, *prima facie*, subject to guardianship, and any one removing such child without permission properly obtained takes the risk of such act upon himself; the fact of having omitted to inquire whether the child had a guardian or not is no defence to a charge of kidnapping a minor from lawful guardianship under s. 361 of the Penal Code.—*Empress v. Umsadbaksh*, I. L. R., 3 Bom. 178. [West and Pinhey, JJ. Dec. 12, 1878.]

THE mother of an illegitimate child is its proper and natural guardian during the period of nurture. And, where the mother, on her death-bed, entrusts the care of such child to a person, who accepts the trust, and maintains the child, such a person is "lawfully entrusted" with the care and custody of the minor within the meaning of s. 361 of the Penal Code. The explanation of the words "lawful guardian" in s. 361 is intended to obviate the difficulty the prosecution might be put to in being bound to prove strictly, in cases of abduction, that the person from whose care the minor has been abducted was the guardian of such minor within the meaning of the legal acceptance of the word.—*Empress v. Pemantle*, I. L. R., 8 Cal. 971. [Garth, C.J., and Cunningham and Macleah, JJ. July 9, 1882.]

THE following extract from Starling's Criminal Law and Procedure is well worth perusal: "The general principles as to the principal offence involved in these sections are admirably laid down by Bramwell, B., in the case of *Reg. v. Ollifier* (10 Cox's Crim. Cases, 402): 'If a young woman leaves her father's house without any persuasion, inducement, or blandishment held out to her by a man, so that she has fairly got away from home, and then goes to him, although it may be his moral duty to return her to her parents' custody, yet his not doing so is no infringement of this Act of Parliament, for the Act does not say he shall restore her, but only that he shall not take her away.' (See also 5 R. J. and P. 152.) 'It is, however, equally clear that, if the girl, acting under his persuasion, leaves her father's house, although he is not present at the moment, yet if he avails himself of that leaving which took place at his persuasion, that would be a taking her out of the father's possession, because the persuasion would be the motive cause of her leaving. Again, although she may not leave at the appointed time, and although he may not wish that she should have left at that particular time, yet if, finding she has left, he avails himself of that to induce her to continue away from her father's custody, in my judgment he is also guilty, if his persuasion operated on her mind so as to induce her to leave.' If a woman be forcibly taken away, and afterwards married, or defiled with her own consent, it is within the provisions of these sections; for the offender is not to escape by having prevailed over the weakness of a woman whom he originally got into his power by such base means (*Fulwood's Case*, Cro. Car. 488; *Swenden's Case*, 5 St. Tr. 450; 1 Hale, 660). And so, too, if she be taken away and married with her own consent, if this be effected by means of fraud; for, she cannot be considered, while under the influence of fraud, to be a free agent (*R. v. Wakefield*, Lancaster Assizes, 1827). Under s. 361, it is immaterial whether the girl consents or not, and the taking need not be by force, actual or constructive (*Reg. v. Mankletow*, Dears. C.C. 159). It is no legal excuse that the defendant made use of no other means than the common blandishment of a lover to induce her to elope with him (*R. v. Twistleton*, 1 Lev. 257; 1 Hawk, c. 44, s. 10). Where a girl was persuaded by the defendant to leave her father's house, and go away with him, without the father's consent, and accordingly left her home alone by a preconcerted arrangement between them, and went to a place appointed, where she was met by the prisoner, and they then went away together, without the intention of returning, this was held to be a taking of the girl out of the father's possession, and certainly it would amount to an enticing (*Reg. v. Mankletow*, *supra*). So, where the defendant, by concert with the girl, met her, and stayed with her away from her father's house for several nights, sleeping with her; and the jury found that the father did not consent, and that the defendant knew that he did not, and that he took the girl away with him in order to gratify his passions, and then let her return home, and not with the intention of keeping her away from her home permanently, the conviction was held right (*Reg. v. Timmins*, 1 Bell, C.C. 276). 'When a girl under

sixteen was found in the streets by herself, and seduced away, it was held that she was not taken out of the possession of her father, although he was living in the same place, and the girl was living with him (Reg. v. Green, 3 F. and F. 274). A was indicted for fraudulently alluring C out of the possession of her mother and stepfather, the latter having the lawful care of her, and B with being an accessory before the fact. C was sent by her mother to live with her grandmother. Instead of going there, she went to B's house, and did not return home when desired by her mother. After remaining with B a month, she left with A, her paternal uncle, and was married to him without her mother's knowledge. It was held that there was no evidence that the alluring was fraudulent, or that the girl was taken out of her mother's possession, and that the facts did not support the indictment (Reg. v. Burrell, 1 L. R. 351). These illustrations are all of cases of abduction of women, but they will sufficiently illustrate the principles involved in the interpretation of the foregoing sections. If the offence be under s. 361, the child must be shown to be under fourteen if a male, and under sixteen if a female, and it will be no defence to say that the accused did not know the child was under the age, but thought he or she was over the specified age, unless he has substantial ground for supposing that such is the fact, so as to bring the case within s. 79 of the Penal Code, for it was ruled in the case of Reg. v. Ollifer, *supra*, that a man deals with an unmarried girl at his peril; and in that case the fact that she had told him she was seventeen was held not to excuse him. (See also Reg. v. Robins, 1 F. and F. 50), where Cockburn, C.J., ruled to the same effect."

**362.** Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.

**363.** Whoever kidnaps any person from British India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

*Punishment for kidnapping.* Ct. of Ses., Presy. Mag. or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

THE prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498, and for wrongful confinement of her under s. 343, it was held that both sentences could not stand, and that, as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.—Queen v. Ishwar Chander Jogee, W. R. Sp. 21. [Loch and Seton-Karr, JJ. April 12, 1864.]

THE subject of an Independent State, though not amenable to the British Courts on a charge of culpable homicide committed out of British territories, may be so amenable on a charge of kidnapping from those territories.—Queen v. Dhurmonarain Moitro and others, 1 W. R. 39. [Kemp and Glover, JJ. Dec. 9, 1864.]

THE conviction of a procuress changed from abduction to enticing, the woman alleged to have been abducted having been of mature age and a free agent. The conviction of the other prisoners also changed from abetting wrongful concealment under s. 368 of the Penal Code to abetment under s. 116.—Queen v. Srimotee Poddee and others, 1 W. R. 45. [Kemp and Glover, JJ. Dec. 16, 1864.] But according to the ruling in *Empress v. Kallu* (1 L. R., 5 All. 233), and s. 199 of the Code of Criminal Procedure (Act X. of 1882), it is illegal to alter a charge of abduction to one of enticement.—Ed.

A CONVICTION of abduction quashed, no force or deceit having been practised on the person abducted.—Queen v. Komul Dass, 2 W. R. 7. [Kemp and Glover, JJ. Jan. 10, 1865.]

THE abduction of a girl, under 16 years of age, with intent to marry, &c., without the consent of her lawful guardian, is punishable under ss. 363 and 366 of the Penal Code. The consent of the kidnapped person is immaterial, nor is it necessary to show that the taking or enticing away was by force or fraud.—Queen v. Koordan Sing and another, 3 W. R. 15. [Glover, J. May 15, 1865.]

A PERSON, in carrying off, without the consent of her lawful guardian, a girl to whom he was betrothed by his father, who, after permitting her to reside occasionally in his house, suddenly changed his mind and broke off the marriage, is guilty of kidnapping from lawful guardianship, punishable under s. 363 of the Penal Code. The fact of the betrothal, however, would considerably diminish the heinousness of the offence.—Queen v. Gooroodoss Rajbunsee, 4 W. R. 7; 5 Rev., Jud.; and Police Journal 149. [Kemp and Seton-Karr, JJ. Sep. 11, 1865.]

WHERE a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner, and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under s. 363 of the Penal Code only; and the conviction of the latter under s. 368 only, while the separate conviction of both under s. 366 was quashed.—*Queen v. Isice Panday and others*, 7 W. R. 36. [Norman, J. April 8, 1867.]

AN enticing away of a child playing on a public road is kidnapping from lawful guardianship.—*Queen v. Mussamat Oozcerun*, 7 W. R. 62. [Glover, J. May 4, 1867.]

THE offence described in s. 363 of the Penal Code is included in that described in s. 369, the kidnapping and the intention of dishonestly taking property from the kidnapped child being included in the latter section.—*Queen v. Shama Sheikh*, 8 W. R. 85. [Kemp and Glover, JJ. July 8, 1867.]

To support a conviction for kidnapping under ss. 361 and 363, it must be shown that the accused took or enticed away from lawful guardianship the person kidnapped.—*Queen v. Neela Bibee and another*, 10 W. R. 33. [Loch and Glover, JJ. Sep. 3, 1868.]

To constitute the offence of kidnapping under s. 363 of the Penal Code, it must be shown that the person was abducted from lawful guardianship, and lawful guardianship is the guardianship of a person who is lawfully entrusted with the care or custody of a minor.—*Queen v. Buldeo*, 2 N. W. P. 286. [Turner, Offg. C.J. July 8, 1870.]

A WARRANT for the arrest of a person on a charge of abduction should state the intent with which the offence was committed.—*Bidloomookhee Dabee and others v. Sreenath Halidar*, 15 W. R. 4; 6 B. L. R. Ap. 129. [Jackson and Mookerjee, JJ. Jan. 21, 1871.]

ACCUSED was convicted by the Magistrate of abetting the kidnapping of a minor. Accused, knowing that the minor had left home without the consent of his parents, and at the instigation of one Komaren, the actual kidnapper, undertook to convey the minor to Kandy in Ceylon, and was arrested on the way thither. The Sessions Judge reversed the conviction on the ground that there was no concert between the accused and Komaren previous to the completion of the kidnapping by the latter. Held by the High Court that, so long as the process of taking the minor out of the keeping of his lawful guardian continued, the offence of kidnapping might be abetted, and that, in the present case, the conviction should be of an offence punishable under ss. 363 and 116 of the Penal Code.—*Reg. v. Samia Kaundan*, I. L. R., 1 Mad. 173. [Morgan, C.J., and Innes, J. Dec. 5, 1876.]

CERTAIN persons were charged under s. 417 of the Penal Code, and were discharged by the Magistrate inquiring into the offence, under s. 215 of Act X. of 1872 (corresponding with s. 253 of Act X. of 1882). The Court of Session, considering that the accused persons had been improperly discharged, forwarded the record to the Magistrate of the District, suggesting to him to make the case over to a Subordinate Magistrate, with directions to inquire into any offence, other than the offence in respect of which the accused persons had been discharged, which the evidence on the record showed to have been committed. The Subordinate Magistrate to whom the case was made over made an inquiry, and committed the accused persons for trial before the Court of Session on charges under ss. 363 and 420 of the Penal Code. It was contended that the Court of Session was not competent to "direct the accused persons to be committed" under s. 296 of Act X. of 1872 (corresponding with s. 438 of Act X. of 1882), the case not being a "sessions case" within the meaning of that section, and that the commitment was consequently illegal. Held that there was no "direction to commit" within the meaning of that section, that is to say, to send the accused persons at once to the Sessions Court without further inquiry, and whether or not the inquiry was made in consequence of the suggestions of the Court of Session was immaterial, and that the inquiry upon the charges under ss. 363 and 420 of the Penal Code was rightly held by the Subordinate Magistrate, and the commitment could not be impeached.—*Empress v. Bhup Singh*, I. L. R., 2 All. 570. [Straight, J. Dec. 31, 1879.]

THE accused were convicted by the Magistrate of the district of Lahore, exercising enhanced powers under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, 380, Act X. of 1882), of kidnapping a married woman, being a minor, from lawful guardianship, for the purposes of prostitution, and sentenced under ss. 363 and 372, Penal Code, to terms of imprisonment exceeding three years. The proceedings were forwarded to the Sessions Judge, Lahore Division, for confirmation of the sentences. The Sessions Judge,



holding that ss. 363 and 372, Penal Code, were inapplicable to married female minors, annulled the convictions, and directed the re-trial of the accused on a charge under s. 498, Penal Code. The Chief Court held that the order of the Sessions Judge was illegal: 1st, because ss. 363 and 372 were applicable to married as well as to unmarried female minors; and, 2ndly, because the Sessions Judge was not competent under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, 380, Act X. of 1882), to direct a new trial upon a new charge; and, 3rdly, because no complaint had been preferred of an offence falling under s. 498, Penal Code.—*Crown v. Kamnu, Panj. Rec.*, No. 12 of 1879.

A MOTHER cannot have a right to the custody of her legitimate children adversely to the father. Ordinarily the custody of the mother is the custody of the father, and any removal of the children from place to place by the mother ought to be taken to be consistent with the right of the father as guardian, and not as a taking out of his keeping. But where a Hindu woman left her husband's house, taking with her her infant daughter, and went to the house of A, and on the same day the daughter was married to B, the brother of A, without the father's consent, it was held that A was rightly convicted under ss. 109 and 363 of the Penal Code of abetting the offence of kidnapping.—*In the Matter of the Petition of Pran Krishna Surma: Empress v. Pran Krishna Surma, I. L. R.*, 8 Cal. 969; 10 C. L. R. G. [*Wilson and Macpherson, JJ.* June 20, 1882.]

364. Whoever kidnaps or abducts any person in order that such person	Ct. of Ses.
Kidnapping or abducting in	Cognizable.
order to murder.	Warrant.
may be murdered, or may be so disposed of as to	Not bailable.
be put in danger of being murdered, shall be	Not comp.
punished with transportation for life, or rigorous imprisonment for a term	
which may extend to ten years, and shall also be liable to fine.	

#### Illustrations.

(a.) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(b.) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

365. Whoever kidnaps or abducts any person with intent to cause that	Ditto.
Kidnapping or abducting	
with intent secretly and	
wrongfully to confine person.	
person to be secretly and wrongfully confined shall	
be punished with imprisonment of either descrip-	
tion for a term which may extend to seven years,	
and shall also be liable to fine.	

366. Whoever kidnaps or abducts any woman with intent that she	Ditto.
Kidnapping or abducting a	
woman to compel her mar-	
riage, &c.	
she may be compelled, or knowing it to be likely that	
she will be compelled, to marry any person against	
her will, or in order that she may be forced or	
seduced to illicit intercourse, or knowing it to be likely that she will be	
forced or seduced to illicit intercourse, shall be punished with imprisonment	
of either description for a term which may extend to ten years, and shall	
also be liable to fine.	

A CHARGE of abduction will not lie under s. 366 when the woman, being of mature age, herself wishes to become a prostitute.—*Queen v. Srimotee Poddee and others, I W. R.* 45. [*Kemp and Glover, JJ.* Dec. 16, 1864.]

WHERE a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under s. 363 of the Penal Code only, and of the latter under s. 368 only, while the separate conviction of both under s. 366 was quashed.—*Queen v. Isree Panday and others, 7 W. R.* 56. [*Norman, J.* April 8, 1867.]

To sustain a charge under s. 366 of abducting a woman with intent that she be forced or seduced to illicit intercourse, there must be evidence to show the intent, or to raise the presumption that illicit intercourse was likely to result from the abduction.—*Meer Alum Khan v. Crown, Panj. Rec.*, No. 23 of 1868.

THE abduction of a girl under 16 years of age with intent to marry without the consent of her lawful guardian is punishable under ss. 363 and 366 of the Penal Code. The consent of the girl is immaterial, nor is it necessary to show that the enticing or taking away was by force or fraud.—*Queen v. Koordan Sing and another*, 3 W. R. 15. [Glover, J. May 15, 1869.]

THERE can be no conviction of the offence of kidnapping under s. 366 of the Penal Code, unless it is proved that the accused has taken the girl out of the keeping or custody of her lawful guardian without her consent.—*Queen v. Mohim Chunder Sil*, Appellant, 16 W. R. 42. [Ainslie, J. Sep. 2, 1871.]

D S had two wives, N and J, by the latter of whom he had two daughters. In February 1876 he went with his wife N to a marriage in another village, leaving J and her two daughters at home. During the temporary absence of D S, J removed her two daughters to the house of her brother-in-law, M, and married the elder girl (aged 8 years) to one G with the assistance of three other persons. The Chief Court held (1) that the word "woman" in s. 366 included a minor female; (2) that there was a kidnapping from the lawful guardianship of D S within the meaning of ss. 361 and 366, notwithstanding the consent of the mother, J, to the girl's removal. *Per Smyth, J.*—Because the girl, during the temporary absence of the father, D S, continued in his possession and under his control as her lawful guardian, and was not under the guardianship of her mother, J. *Per Plowden, J.*—Because the consent of a mere custodian in breach of the trust reposed by the person from whom the right to custody is derived is not the consent of the guardian in whose keeping the minor still continues through the custodian.—*Dhara Singh v. Mus-sammat Kahno*, Panj. Rec., No. 8 of 1878.

WHERE a girl, under 16 years of age, who was travelling with a chance protector (not her lawful guardian), went off with the accused voluntarily, and without any false inducement or force on his part, and without any agreement between the accused and the girl or her protector that she should prostitute herself, and the accused subsequently hired out the girl on two occasions for the purpose of sexual intercourse, the Chief Court, reversing the order of the lower Court, held that no offence was made out against accused under s. 373 or s. 366. In order to constitute an offence under s. 373, there must be a taking possession of the minor under some agreement or understanding, either with some third person or the minor, that the minor is to be employed for some purpose specified in the section.—*Hardeo v. Empress*, Panj. Rec., No. 7 of 1880.

THE mother of an illegitimate child is its proper and natural guardian during the period of nurture. And where the mother, on her death-bed, entrusts the care of such child to a person, who accepts the trust, and maintains the child, such a person is "lawfully entrusted" with the care and custody of the minor within the meaning of s. 361 of the Penal Code. The explanation of the words "lawful guardian" in s. 361 is intended to obviate the difficulty the prosecution might be put to in being bound to prove strictly in cases of abduction that the person from whose care the minor has been abducted was the guardian of such minor within the meaning of the legal acceptance of the word.—*Empress v. Pemantle*, I. L. R., 8 Cal. 971. [Garth, C.J., and Cunningham and Maclean, JJ. July 9, 1882.]

**367.** Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt or slavery, or to the unnatural lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**368.** Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or keeps such person in confinement, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge or for the same purpose as that with or for which he conceals or detains such person in confinement.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not-comp.

Ditto,

THE conviction of a procuress changed from abduction to enticing, the woman alleged to have been abducted having been of mature age and a free agent. The conviction of the other prisoners also changed from abetting wrongful concealment under s. 368 of the Penal Code to abetment under s. 116.—*Queen v. Srimotee Poddee and others*, 1 W. R. 45. [Kemp and Glover, JJ. Dec. 10, 1864.] It is illegal, however, to alter a charge from abduction to enticement. See *Empress v. Kallu*, 1 L. R., 5 All. 233, and s. 199 of the new Code of Criminal Procedure (Act X. of 1882).—Ed.

WHERE a girl of 11 years of age was taken out of the custody of her lawful guardian by the first prisoner and offered for sale in marriage to another, and the second prisoner illegally concealed her, the conviction of the former was upheld under s. 368 of the Penal Code only, and of the latter under s. 368 only, while the separate conviction of both under s. 366 was quashed.—*Queen v. Isree Panday and others*, 7 W. R. 56. [Norman, J. April 8, 1867.]

S. 368 of the Penal Code refers to some other party who assists in concealing any person who has been kidnapped, and not to the kidnappers.—*Queen v. Sheikh Oozeer*, 6 W. R. 17. [Loch, J. July 2, 1868.]

If, knowing that a girl has been kidnapped, a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences, punishable under the Penal Code. Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or a guardian, or a jailor.—*Queen v. Mirza Sikundar Bakht*, 3 N. W. P. 146. [Turner and Turnbull, JJ. June 20, 1871.]

THE mere fact of a girl being received into a house and retained there by the owner, even after he may have become aware or found reason to believe that she had been kidnapped, does not amount to concealment of her, unless an intention of keeping her out of view be apparent.—*Queen v. Jhurrup*, 5 N. W. P. 133. [Pearson and Jardine, JJ. May 3, 1873.]

THE mere circumstance of a girl, who had been kidnapped, staying in the house of a person for a day or two, does not warrant the conclusion that she was wrongfully concealed by that person, with the object of baffling any search that might be made for her.—*Queen v. Mussumut Chubbocoo*, 5 N. W. P. 189. [Pearson and Jardine, JJ. June 11, 1873.]

TO CONSTITUTE the offence of "wrongfully concealing" a person who has been kidnapped or abducted, there must be a withdrawal of that person from the actual observation of others, by removal or otherwise; and merely giving false information about such person is not sufficient.—*Phula Singh v. Crown*, Panj. Rec., No. 10 of 1874.

<b>369.</b> Whoever kidnaps or abducts any child under the age of ten years,	Ct. of Ses.
Kidnapping child under ten	Cognizable.
years with intent to steal from	Warrant.
its person.	Not bailable.
	Not comp.
shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.	

THE offence described in s. 363 of the Penal Code is included in that described in s. 369, the kidnapping and the intention of dishonestly taking property from the kidnapped child being included in the latter section.—*Queen v. Shama Sheikh*, 8 W. R. 35. [Kemp and Glover, JJ. July 2, 1867.]

SEPARATE sentences cannot be awarded in one case for abducting a child in order to take property from its person (s. 369), and theft after preparation to cause death, &c. (s. 382). Where the evidence shows that the act was one and the same, the sentence under the latter section was cancelled, there being no evidence of any preparation having been made to cause death, &c., within the meaning of that section.—*Queen v. Kashee Nath Chungo*, 8 W. R. 84. [Seton-Karr and Macpherson, JJ. Nov. 30, 1867.]

<b>370.</b> Whoever imports, exports, removes, buys, sells, or disposes of,	Ct. of Ses.
any person as a slave, or accepts, receives, or detains, against his will, any person as a slave, shall	Uncog.
be punished with imprisonment of either description for a term which may	Warrant.
extend to seven years, and shall also be liable to fine.	Bailable.
	Not comp.

A BOUGHT a girl, aged 9, and gave her in marriage to his brother. A was convicted by the Magistrate of the district of disposing of the girl as a slave. *Held* that the conviction was not sustainable.—*Crown v. Roda*, Panj. Rec., No. 19 of 1867.

R, HAVING obtained possession of D, a girl about 11 years of age, disposed of her to a third person, for value, with intent that such person should marry her, and such person received her with that intent. *Held* that R could not be convicted of disposing of D as a slave under s. 370 of the Penal Code. *Queen v. Mirza Sikunder Bukhut* (3 N. W. P. 146) remarked upon.—*Empress v. Ram Kuar*, I. L. R., 2 All. 723. [Stuart, C.J., and Pearson, Spankie, Oldfield, and Straight, JJ. Mar. 8, 1880.]

S TRANSFERRED to A for Rs. 25 his rights in the person of B, a girl of 13 years. In a document in which the transaction was recorded, B was described as a vellāti or slave-girl purchased by S from P. *Held* that A was guilty of buying B as a slave within the meaning of s. 370 of the Penal Code.—*Aminu v. Queen-Empress*, I. L. R., 7 Mad. 277. [Hutchins and Brandt, JJ. Feb. 13, 1884.]

**371.** Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves, shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**372.** Whoever sells, lets to hire, or otherwise disposes of, any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

THE prisoners were convicted, the one of disposing of, and the other of receiving, two children, females under the age of 16 years, with intent that such females should be used for the purpose of prostitution. The evidence showed that the children were disposed of and registered as dancing girls of a pagoda for the purpose of being brought up as dancing girls. *Held* that offences under ss. 372 and 373 of the Penal Code had been committed, and that the prisoners were properly convicted.—*Ex-parte Padmarati*, 5 Mad. H. C. R. 415. [Holloway and Innes, JJ. 1869.]

THE dedication of a minor girl under the age of 16 years to the service of a Hindu temple, by the performance of the *shej* ceremony, where it was shown that it was almost invariably the case that girls so dedicated led a life of prostitution, was a disposing of such minor, knowing it to be likely that she would be used for the purpose of prostitution, within the meaning of s. 372 of the Penal Code.—*Reg. v. Jailī Bhāvin*, 6 Bom H. C. R. 60. [Warden and Lloyd, JJ. Sep. 27, 1869.]

S, A married Mahomedan girl under 16, while living with N, her grandmother, and in the absence of her husband, formed an adulterous intrigue with two Hindūs, with the knowledge of N. S and N were then induced by the Hindūs to remove to another village, that S might take up the trade of a prostitute. They there met J, a public woman, with whom they went to reside, and who introduced visitors to S, and received the money paid by them, in exchange for the board and food supplied to S and N. N was convicted, under s. 372, of disposing of a minor for the purpose of prostitution, and J was convicted, under s. 373, of obtaining possession of a minor for the purpose of prostitution. *Held per Jackson, J.*—That on the facts proved no offence was committed under the Penal Code. *Per Glover, J.*—N and J were both guilty under ss. 372 and 373 respectively, and their appeals should be dismissed.—*Queen v. Noor Jan and another*, 6 B. L. R. Ap. 34; 14 W. R. 39. [Jackson and Glover, JJ. July 30, 1870.]

To constitute an offence under s. 372 of the Penal Code, it is not necessary that there should have been a disposal tantamount to a transfer of possession or control over the minor's person.—*Reg. v. Arnachellam*, I. L. R., 1 Mad. 164. [Morgan, C.J., and Iunes, J. July 18, 1876.]

THE accused were convicted by the Magistrate of the district of Lahore, exercising enhanced powers under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, and 380, Act X. of 1892), of kidnapping a married woman, being a minor, from lawful guardianship, for the purpose of prostitution, and sentenced under ss. 363 and 372, Penal Code, to terms of imprisonment exceeding three years. The proceedings were forwarded to the Sessions Judge, Lahore Division, for confirmation of the sentences. The Sessions Judge, holding that ss. 363 and 372, Penal Code, were inapplicable to married female minors, annulled the convictions, and directed the retrial of the accused on a charge under s. 493, Penal Code. *Held* that the order of the Sessions Judge was illegal—1st, because ss. 363 and 372 were applicable to married as well as to unmarried female minors; 2nd, because the Sessions Judge was not competent under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, and 380, Act X. of 1892), to direct a new trial upon a new charge; and, 3rd, because no complaint had been preferred of an offence falling under s. 493, Penal Code.—*Crown v. Kammu*, Panj. Rec., No. 12 of 1879.

THE facts which must be proved in order to support a conviction under ss. 372 and 373 discussed and explained. The gist of the offence under either section consists in the *intention* that the minor shall be employed or used for the purpose of prostitution, or for any unlawful and immoral purpose, or with the *knowledge* that it is likely that such minor will be employed or used for any such purpose. In the absence of any intention or knowledge of the kind referred to, the mere buying, selling, letting, or obtaining possession of a minor is not *per se* a criminal act, as the law of India now stands. *Per Rattigan, J.*—An “unlawful” act may either be defined in connection with the definition of the term “illegal,” as contained in s. 43 of the Penal Code, or it may be said that every act is unlawful which the law has prohibited; but if the purpose be not “unlawful” within either of these definitions, although it may be immoral in a purely ethical sense, the offence will not be made out. The principle laid down by the Chief Justice of the Madras High Court (5 Mad. H. C. R. 473), that to bring a case within the section “it is essential to show that possession of the minor has been obtained under a distinct arrangement come to between the parties that the minor’s person should be for some time completely in the keeping and under the control and direction of the party having possession, whether ostensibly for a proper purpose or not; thus excluding the supposition that an obtaining of possession, in the sense of merely having sexual intercourse with a woman, could have been in the contemplation of the framers of the section,” approved: *Held, per Rattigan, J.*, in the present case, that as the facts failed to prove with reference to certain of the accused, and did not necessarily raise the presumption that they, in either obtaining possession of the girl (the subject of the charge), or in subsequently attempting to dispose of her, intended that she should be employed or used for some unlawful and immoral purpose, nor was there anything to show that the said accused knew or had reason to believe that the girl was otherwise than unmarried, there was therefore not sufficient evidence to establish a charge under s. 372 or s. 373 of the Penal Code, and that the said accused should be acquitted. If the intention of the accused was to dispose of the minor for the purposes of sexual intercourse, which was intended to be illicit, the purpose would be clearly *immoral*; but to prove this kind of intercourse *unlawful*, within the meaning of s. 43 of the Penal Code, it would be necessary to produce such evidence as would support a civil action for seduction, because in the absence of such evidence the seduction would not furnish ground for a civil action, and consequently could not be pronounced “unlawful,” within the terms of the above section. If the intention of the accused was to dispose of the girl upon the condition of marriage, the purpose would not be “unlawful,” as although by Hindú and Muhammadan law a marriage contracted for a minor by any other than his or her lawful guardian would, no doubt, be irregular, and, under certain circumstances, capable of being set aside, it could hardly be said to be “unlawful and immoral” within the meaning of ss. 372 and 373 of the Penal Code, construing the first of these expressions as above. *Held per Brandreth, J.* (dissenting from Rattigan, J., as to the acquittal of two of the above-mentioned accused), that the Magistrate of the District (Sialkot), in the present condition of the district; with regard to the public notoriety of the traffic and the vigorous efforts of the police to suppress it, was justified in presuming that all parties who sheltered or passed on the girl in the present case were acting in concert, and knew well that she was a married woman who had been seduced from her husband to be sold for the advantage of the gang to some new husband; and that, therefore, they were guilty of an offence under s. 372, as they had combined to dispose of a minor under the age of 16 years, with the intent that such minor should be used for an unlawful and immoral purpose, *viz.*, a second illegal marriage. *Held, per Barkley, J.* (differing from Brandreth, J., as to this), that it would not be safe to pre-

sume that the accused knew, or had reason to believe, that the girl in question was married; but (dissenting from Rattigan, J., as to this) that even on this assumption the facts established amounted to an offence. The purpose for which the prisoners obtained possession of the girl was to dispose of her in marriage for a pecuniary consideration; such purpose was clearly "immoral," and the purpose of bringing about an unlawful marriage would be an "unlawful" purpose, whether, under the circumstances of the case, it would be an offence or not, as it would be a purpose to do a thing which the person intending it had no lawful power or right to do. For to give validity to the marriage of a Hindú minor, the consent either of one of the guardians prescribed for the purpose by Hindú law, or of some one to whom such guardian had presumably delegated his authority, is essential, and in the absence of such consent there is no marriage, though, in considering whether consent has been given, the subsequent conduct of the guardian may be taken into account. *Held*, therefore, that one of the accused was guilty of an offence under s. 373 of the Penal Code, though not under s. 372, as he had not effected his purpose of disposing of the girl when arrested.—*Khushala v. Empress*, Panj. Rec., No. 27 of 1880.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**373.** Whoever buys, hires, or otherwise obtains possession of, any minor Buying of any minor for under the age of sixteen years, with intent that purposes of prostitution, &c. such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

WITH reference to the clause—obtains possession of any minor, &c.—it has been held that, where the charge is the purchase or acquisition of the minor for an immoral purpose, the proper Court to try the offence under s. 373 is the Court having jurisdiction in the place in which the purchase or acquisition was made, and not the Court having jurisdiction in the place of subsequent retention in another district.—C. N. A., N. W. P., Part II., 131.

THE prisoners were convicted, the one of disposing of, and the other of receiving, two children, females under the age of 16 years, with intent that such females should be used for the purpose of prostitution. The evidence showed that the children were disposed of and registered as dancing girls of a pagoda for the purpose of being brought up as dancing girls. *Held* that offences under ss. 372 and 373 of the Penal Code had been committed, and that the prisoners were properly convicted.—*Ex-parte Padmavati*, Appellant, 5 Mad. H. C. R. 415. [Holloway and Innes, JJ. 1869]

THE prisoner was tried upon a charge of having obtained possession of Dowlath Bee, a minor aged ten years, with intent that she should be used for an unlawful and immoral purpose, that is to say, for the purpose of illicit intercourse, and having thereby committed an offence under s. 373 of the Penal Code. The evidence shewed that the prisoner met Dowlath Bee, a girl eleven years old, in a street at Triplicane, and promised to give her a pice if she would accompany him into an uninhabited house close by, and allow him to have sexual intercourse with her. The girl went willingly with the prisoner; and both were detected in the act of having sexual intercourse. The girl had gone out without permission, had not attained the age of puberty, and the evidence tended to show that the girl had not before had sexual connexion. The jury convicted the prisoner. *Held* by the High Court that the case proved against the prisoner did not make out the offence charged.—*Dowlath Bee v. Shaik Ali*, 5 Mad. H. C. R. 473. [Scotland, C.J., and Holloway and Innes, JJ. May 27, 1870.]

WHERE a girl, under 16 years of age, who was travelling with a chance protector (not her lawful guardian), went off with the accused voluntarily, and without any false inducement or force on his part, and without any agreement between the accused and the girl or her protector that she should prostitute herself, and the accused subsequently hired out the girl on two occasions for the purpose of sexual intercourse, *held*, reversing the order of the lower Court, that no offence was made out against accused under s. 373 or s. 366. In order to constitute an offence under s. 373, there must be a taking possession of the minor under some agreement or understanding, either with some third person or the minor, that the minor is to be employed for some purpose specified in the section.—*Hardeo v. Empress*, Panj. Rec., No. 7 of 1880.

CERTAIN persons, falsely representing that a minor girl of a low caste was a member of a higher caste, induced a member of such higher caste to take her in marriage, and to pay money for her, in the full belief that such representation was true. *Held per Stuart, C.J.*, that such persons could not be convicted, on these facts, of offences under ss. 372 and 373 of the penal Code. *Per Oldfield, J.*, and *Straight, J.*, that, if such girl was disposed of for the purpose of marriage, it could not be said, because the marriage might be invalid under Hindu law, that such persons acted with the intention that she should be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or that they knew it to be likely that she would be employed or used for such purpose, and consequently they could not be convicted of an offence under those sections. *Per Pearson, J.*, and *Spankie, J.*, that such girl having been disposed of for the purpose of marriage, although the marriage might be objectionable under Hindu law, it did not appear that it was wholly invalid, and therefore such intent or knowledge could not certainly be presumed, and such persons could not be convicted of offences under those sections.—*Empress v. Sri Lal, 1. L. R. 2 All. 694. [Stuart, C.J., and Pearson, Spankie, Oldfield, and Straight, JJ. Feb. 9, 1880.]*

**374.** Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Unlawful compulsory labour.

Any Mag. Cognizable. Warrant. Bailable. Comp.

AMENDS cannot be awarded in a case under s. 374 of the Penal Code (unlawful compulsory labour), which comes under ch. 14 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with ch. 17 of the new Code of Criminal Procedure (Act X. of 1892).—*Rateeah v. Phokondee and another, 5 W. R. 1. [Phear and Glover, JJ. Jan. 8, 1866.]*

### OF RAPE.

**375.** A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the following descriptions:—

Rape.

*First.*—Against her will.

*Secondly.*—Without her consent.

*Thirdly.*—With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

*Fourthly.*—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

*Fifthly.*—With or without her consent, when she is under ten years of age.

*Explanation.*—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

*Exception.*—Sexual intercourse by a man with his own wife, the wife not being under 10 years of age, is not rape.

**376.** Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for rape.

Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

SEXUAL intercourse by a man with a woman without her free consent, i. e., a consent obtained without putting her in fear of injury, amounts to rape; and the Judge should leave the question to the jury, and not direct them to find that the woman's consent after considerable struggle renders the charge of rape nugatory.—*Queen v. Akbar Kazee, 1 W. R. 21. [Kemp and Glover, JJ. Nov. 11, 1864.]*

HELD to be improbable and physically impossible that a girl of tender age should be killed by any violence in rape and not shown any external signs of violence.—Queen v. Bane Madhub Mookerjee, 1 W. R. 29. [Kemp and Glover, JJ. Nov. 22, 1864.]

THE measure of punishment in a case of rape should not depend on the social position of the party injured, but on the greater or less atrocity of the crime, the conduct of the criminal, and the defenceless and unprotected state of the injured female.—Queen v. Jhan-tah Noshyo, 6 W. R. 59. [Seton-Karr, J. Aug. 27, 1866.]

UNDER ss. 57, 376, and 511 of the Penal Code, a sentence of ten years' transportation, or of five years' rigorous imprisonment, may be passed for the offence of attempt to commit rape; but a sentence of seven years' rigorous imprisonment, commutable under s. 59 of the Penal Code to seven years' transportation, is illegal.—Queen v. Joseph Meriam, 10 W. R. 10; 1 B. L. R. A. Cr. 5. [Loch and Glover, JJ. July 6, 1868.]

WHEN an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.—Reg. v. Naiada, 1 L. R., 1 All. 43. [Turner, Offg. C.J., and Pearson, Spankie, and Oldfield, JJ. Aug. 23, 1875.]

AN indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passions at all events, and in spite of all resistance.—Empress v. Shankar, 1 L. R., 5 Bom. 403. [Melvill and Nánabhái Haridás, JJ. Mar. 2, 1881.]

#### OF UNNATURAL OFFENCES.

**377.** Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Explanation.*—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

WITH reference to ss. 59 and 377, Penal Code, when an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment.—Reg. v. Naiada, 1 L. R., 1 All. 43. [Turner, Offg. C.J., and Pearson, Spankie, and Oldfield, JJ. Aug. 23, 1875.]

THE accused was tried by the Sessions Court for an unnatural offence, and convicted on a charge which did not allege the time when, place where, or point to any known or unknown person with whom the offence was committed, and without any proofs of those particulars, the facts proved against him only being that he habitually wore woman's clothes, and exhibited physical signs of having committed the offence. The High Court, in the exercise of its criminal revisional jurisdiction, sent for the records, and delivered the following judgment: "This conviction cannot possibly be sustained. The charge upon which the accused was committed, and subsequently tried, alleges neither time when, place where, nor points to any known or unknown person with whom, the particular act charged as an offence against s. 377 of the Penal Code was committed; and for aught that appears to the contrary, the suggested unnatural intercourse may have taken place out of the jurisdiction of the Moradabad Court, and at some place where the Penal Code is not in force. At best, the case for the prosecution is, that the accused is a habitual sodomite; but at present there is no provision of the law that covers it, or renders him amenable to punishment upon evidence of so vague and general a description as that to be found in the present record. I fully appreciate the desire of the authorities at Moradabad to check these disgusting practices; but neither they nor I can set law and procedure at defiance in order to obtain an object, however laudable. The conviction is quashed, and the accused must be released."—Queen-Empress v. Khairati, 1 L. R., 6 All. 204. [Straight, J. Jan. 31, 1884.]



## CHAPTER XVII.

## OF OFFENCES AGAINST PROPERTY.

## INDIAN LAW COMMISSIONERS' REPORT ON OFFENCES AGAINST PROPERTY.

THERE is such a mutual relation between the different parts of the law that those parts must all attain perfection together. That portion, be it what it may, which is selected to be first put into the form of a Code, with whatever clearness and precision it may be expressed and arranged, must necessarily partake, to a considerable extent, of the uncertainty and obscurity in which other portions are still left.

This observation applies with peculiar force to that important portion of the Penal Code which we now propose to consider. The offences defined in this chapter are made punishable on the ground that they are violations of the right of property. But the right of property is itself the creature of the law. It is evident, therefore, that if the substantive civil law touching this right be imperfect or obscure, the penal law, which is auxiliary to that substantive law, and of which the object is to add a sanction to that substantive law, must partake of the imperfection or obscurity. It is impossible for us to be certain that we have made proper penal provisions for violations of civil rights till we have a complete knowledge of all civil rights; and this we cannot have while the law respecting those rights is either obscure or unsettled. As the present state of the civil law causes perplexity to the legislator in framing the Penal Code, so it will occasionally cause perplexity to the Judges in administering that Code. If it be matter of doubt what things are the subjects of a certain right, in whom that right resides, and to what that right extends, it must also be matter of doubt whether that right has or has not been violated.

For example, A, without Z's permission, shoots snipes on Z's ground, and carries them away. Here, if the law of civil rights grants the property in such birds to any person who can catch them, A has not, by killing them and carrying them away, invaded Z's right of property. If, on the other hand, the law of civil right declares such birds the property of the person on whose lands they are, A has invaded Z's right of property. If it be matter of doubt what the state of the civil law on the subject actually is, it must also be matter of doubt whether A has wronged Z or not.

By the English law,\* pigeons, while they frequent a dove-cot, are the property of the owner of the dove-cot. By the Roman law† they were not so. By the French law‡ they are his property at one time of the year, and not his property at another. Here it is evident that the taking of such a pigeon, which would in England be a violation of the right of property, would be none in a country governed by the Roman law, and that, in France, it would depend on the time of the year whether it were so or not.

A lends a horse to B. B sells the horse to Z, who buys it believing in good faith that B has a right to sell it. A sees the horse feeding. He mounts it, and rides away with it. Here, if the law of civil rights provides that a thing sold by one who has no right to sell it shall nevertheless be the property of a *bona fide* purchaser, A has invaded Z's right of property. If, on the other hand, A's right is not affected by what has passed between B and Z, A does not commit an infraction of Z's right of property. If it be doubtful whether the right to the horse be in A or in Z, it must also be doubtful whether A has or has not committed an infraction of Z's right.

A path running across a field which belongs to Z has, during three years, been used as a public way. A, in spite of a prohibition from Z, uses it as such. Here, if, by the civil law, an usage of three years is sufficient to create a right of way, A has committed no infraction of Z's right. But if a prescription of more than three years, or an express grant, be necessary to create a right of way, A has committed an infraction of Z's right of property.

A discovers a mine on land occupied by him. Here, if the civil law assigns all minerals to the occupier of the land, A violates no right of property by appropriating the minerals. But if the civil law assigns all minerals to the Government, A violates the right of property by such appropriation.

The sea recedes, and leaves dry land in the immediate neighbourhood of Z's property. Z cultivates the land. A turns cattle on the land, and destroys Z's crops. Here, if the civil law assigns alluvial additions to the occupier of the nearest land, A is a wrong-doer. If it declares alluvial additions common, A is not a wrong-doer. If it assigns

\* Blackstone, Book II. Chap. 25.

† Columbarum fera natura est, nec ad rem pertinet, quod ex consuetudine evolare et revolare solent. Inst. Lib. II. Tit. 1.

‡ Paillet Manuel de Droit Français.

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alluvial additions to the Government, both A and Z are wrong-doers. If it be uncertain to whom the law assigns alluvial additions, it must be also uncertain who is the wrong-doer, and whether there be any wrong-doer.

The substantive civil law, in the instances which we have given, is different in different countries, and in the same country at different times. As the substantive civil law varies, the penal law, which is added as a guard to the substantive civil law, must vary also. And while many important questions of substantive civil right are undetermined, the Courts must occasionally feel doubtful whether the provisions of the Penal Code do or do not apply to a particular case.

It would, evidently, be impossible for us to determine in the Penal Code all the momentous questions of civil right which, in the unsettled state of Indian jurisprudence, will admit of dispute. We have, indeed, ventured to take for granted in our illustrations many things which properly belong to the domain of the civil law, because, without doing so, it would have been impossible for us to explain our meaning. But we have, to the best of our judgment, avoided questions respecting which, even in the present state of Indian jurisprudence, much doubt could exist. And in the text of the law we have, as closely as was possible, confined ourselves to what is in strictness the duty of persons engaged in framing a Penal Code. We have provided punishments for the infraction of rights, without determining in whom those rights vest, or to what those rights extend. We are inclined to hope that, even if the Penal Code should come into operation before the Code of civil rights has been framed, the number of cases in which the want of a Code of civil rights would occasion perplexity to the criminal tribunals will bear but a very small proportion to those in which no such perplexity will exist.

All the violations of the rights of property which we propose to make punishable by this chapter fall under one or more of the following heads :

1. Theft.
2. Extortion.
3. Robbery.
4. The criminal misappropriation of property not in possession.
5. Criminal breach of trust.
6. The receiving of stolen property.
7. Cheating.
8. Fraudulent bankruptcy.
9. Mischief.
10. Criminal trespass.

All these offences resemble each other in this, that they cause, or have some tendency

directly or indirectly, to cause some party not to have such a dominion over property as that party is entitled by law to have.

The first great line which divides these offences may be easily traced. Some of them merely prevent or disturb the enjoyment of property by one who has a right to it. Others transfer property to one who has no right to it. Some merely cause injury to the sufferer. Others, by means of wrongful loss to the sufferer, cause wrongful gain to some other party. The latter class of offences are designated in this Code as fraudulent.

Every offence against property may be fraudulently committed. But theft, extortion, robbery, the criminal misappropriation of property not in possession, criminal breach of trust, the receiving of stolen property, fraudulent bankruptcy, and cheating, must be in all cases fraudulently committed. Fraud enters into the definition of every one of these offences. But fraud does not enter into the definition of mischief, or of criminal trespass.

Theft, the criminal misappropriation of property not in possession, and criminal breach of trust, are, in the great majority of cases, easily distinguishable. But the distinction becomes fainter and fainter as we approach the line of demarcation, and at length the offences fade imperceptibly into each other. This indistinctness may be greatly increased by unskilful legislation. But it has its origin in the nature of things and in the imperfection of language, and must still remain in spite of all that legislation can effect.

We believe it to be impossible to mark with precision, by any words, the circumstances which constitute possession. It is easy to put cases about which no doubt whatever exists, and about which the language of lawyers and of the multitude would be the same. It will hardly be doubted, for example, that a gentleman's watch lying on a table in his room is in his possession, though it is not in his hand, and though he may not know whether it is on his writing table or on his dressing table. As little will it be doubted that a watch which a gentleman lost a year ago on a journey, and which he has never heard of since, is not in his possession. It will not be doubted that when a person gives a dinner, his silver forks, while in the hands of his guest, are still in his possession ; and it will be as little doubted that his silver forks are not in his possession when he has deposited them with a pawnbroker as a pledge. But between these extreme cases lie many cases in which it is difficult to pronounce, with confidence, either that property is, or that it is not, in a person's possession.

This difficulty, sufficiently great in itself, would, we conceive, be increased by laws which should pronounce that in a set of cases arbitrarily selected from the mass property is in the possession of some party in whose possession according to the understanding of all mankind it is not. The rule of English law respecting what is called breaking bulk is an instance of what we mean. A person who has entrusted a hamper of wine to another to carry to a great distance is not in possession of that hamper of wine. But if the person in trust opens the hamper and takes out a bottle, the possession, according to the English law-books, forthwith flies back to the distant owner. Mr. Livingston has laid down a rule of a similar kind, the effect of which, if we understand it rightly, is to annul the whole law of theft as he has framed it, and indeed to render it impossible that theft can be committed in Louisiana. Theft is defined by him to be "the fraudulently taking of corporal personal property having some assignable value, and belonging to another, from his possession and without his assent." But in a subsequent clause he says "that neither the ownership nor the legal possession of property is changed by theft alone, without the circumstances required in such case by the Civil Code, in order to produce a change of property; therefore, stolen goods, if fraudulently taken from the thief, are stolen from the original proprietor."

But, if stolen by the second thief from the original proprietor, they must, according to Mr. Livingston's definition of theft, be taken by the second thief out of the possession of the original proprietor. Therefore the first thief has left them in the possession of the original proprietor. That is to say, the first thief has not committed theft.

It will not be imagined that we refer to this inconsistency in the Code of Louisiana for the purpose of throwing any censure on the distinguished author of that Code. To do so would be unjust, and in us especially most ungrateful, and also most imprudent. For we are by no means confident that inconsistencies quite as remarkable will not be detected in the Code which we now submit to Government. We note this error of Mr. Livingston for the purpose of shewing how dangerous it is for a legislator to attempt to escape from a difficulty by giving a technical sense to an expression which he nevertheless continues to use in a popular sense. For the purpose of preventing any difference of opinion from arising in cases likely to occur very often, we have laid down a few rules which we believe to be in accordance with the general sense of mankind as to what shall be held to constitute possession.

But, in general, we leave it to the tribunals, without any direction, to determine whether particular property is at a particular time in the possession of a particular person or not.

Much uncertainty will still remain. This we cannot prevent. But we can, as it appears to us, prevent the uncertainty from producing any practical evil. The provision contained in cl. 61 will, we think, obviate all the inconveniences which might arise from doubts as to the exact limits which separate theft from misappropriation and from breach of trust.

The effect of that clause will be to prevent the Judges from wasting their time and ingenuity in devising nice distinctions. If a case which is plainly theft comes before them, the offender will be punished as a thief. If a case which is plainly breach of trust comes before them, the offender will be punished as guilty of breach of trust. If they have to try a case which lies on the frontier, one of those thefts which are hardly distinguishable from breaches of trust, or one of those breaches of trust which are hardly distinguishable from theft, they will not trouble themselves with subtle distinctions, but, leaving it undetermined by which name the offence should be called, will proceed to determine what is infinitely of greater importance, what shall be the punishment.

In theft, as we have defined it, the object of the offender always is to take property which is in the possession of a person out of that person's possession. Nor have we admitted a single exception to this rule. In the great majority of cases our classification will coincide with the popular classification. But there are a few aggravated cases of what we designate as misappropriation and breach of trust, which bear such an affinity to theft that it may seem idle to distinguish them from thefts. And it certainly would be idle to distinguish such cases from thefts, if the distinction were made with a view to those cases alone. But, as we have a line of distinction which we think it desirable to maintain in the great majority of cases, we think it desirable also to maintain that line in the few cases in which it may separate things which are of a very similar description.

One offence which it may be thought that we ought to have placed among thefts is the pillaging of property during the interval which elapses between the time when the possessor of the property dies, and the time when it comes into the possession of some person authorized to take charge of it. This crime, in our classification, falls under the head, not of theft, but of misappropriation of property not in possession.

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The ancient Roman jurists viewed it in the same light. The property taken under such circumstances, they argued, being in no person's possession, could not be taken out of any person's possession. The taking, therefore, was not *furtum*, but belonged to a separate head called the *crimen expilatorie hereditatis*.\* The French lawyers, however, long ago found out a legal fiction by means of which this offence was treated as theft in those parts of France where the Roman law was in force.† Mr. Livingston's definition of theft appears to us to exclude this species of offence, nor indeed do we think that it could be reached by any provision of his Code. That it ought to be punished with severity under some name or other is indisputable. By what name it should be designated may admit of some dispute. If we call it theft, we speak the popular language. If we call it misappropriation of property not in possession, we avoid an anomaly, and maintain a line which, in the great majority of cases, is reasonable and convenient. On the whole, we are inclined to maintain this line.

## CRIMINAL BREACH OF TRUST, ETC.

Again, a carrier who opens a letter entrusted to his charge, and takes thence a bank-note, would be commonly called a thief. It is certain that his offence is not morally distinguishable from theft. Here, however, as before, we think it expedient to maintain our general rule; and we therefore designate the offence of the carrier not as theft, but as criminal breach of trust.

The illustrations which we have appended to the provisions respecting theft, the misappropriation of property not in possession, and breach of trust, will, we hope, sufficiently explain to his Lordship in Council the reasons for most of those provisions.

It may possibly be remarked that we have not, like Mr. Livingston, made it part of our definition of theft, that the property should be of some assignable value. We would therefore observe that we have not done so only because we conceive that the law, as framed by us, obtains the same end by a different road. By one of the general exceptions which we have proposed it is provided that nothing shall be an offence by reason of any harm which it may cause, or be intended to cause, or be known to be likely to cause, if the whole of that harm is so slight that no person of ordinary sense and temper would complain of such harm. This provision will prevent the law of theft from being abused for the purpose of punishing those venial violations of

the right of property which the common sense of mankind readily distinguishes from crimes, such as the act of a traveller who tears a twig from a hedge, of a boy who takes stones from another person's ground to throw at birds, of a servant who dips his pen in his master's ink. It does not appear to us that any further rule on this subject is necessary.

## EXTORTION.

The offence of extortion is distinguished from the three offences which we have been considering by this obvious circumstance, that it is committed by the wrongful obtaining of a consent. In one single class of cases theft and extortion are in practice confounded together so inextricably that no judge, however sagacious, could discriminate between them. This class of cases, therefore, has, in all systems of jurisprudence with which we are acquainted, been treated as a perfectly distinct class; and we think that this arrangement, though somewhat anomalous, is strongly recommended by convenience. We have, therefore, made robbery a separate crime.

## ROBBERY.

There can be no case of robbery which does not fall within the definition either of theft or of extortion. But in practice it will perpetually be matter of doubt whether a particular act of robbery was a theft or an extortion. A large proportion of robberies will be half theft, half extortion. A seizes Z, threatens to murder him unless he delivers all his property, and begins to pull off Z's ornaments. Z in terror begs that A will take all he has, and spare his life, assists in taking off his ornaments, and delivers them to A. Here, such ornaments as A took without Z's consent are taken by theft. Those which Z delivered up from fear of death are acquired by extortion. It is by no means improbable that Z's right-arm bracelet may have been obtained by theft, and left-arm bracelet by extortion; that the rupees in Z's girdle may have been obtained by theft, and those in his turban by extortion. Probably in nine-tenths of the robberies which are committed something like this actually takes place, and it is probable that a few minutes later neither the robber nor the person robbed would be able to recollect in what proportions theft and extortion were mixed in the crime; nor is it at all necessary for the ends of justice that this should be ascertained. For though in general the consent of a sufferer is a circumstance which very materially modifies the character of the offence, and which ought therefore to

\* Justinian Dig. Lib. XLVII. Tit. 19.

† Domat, Sup. III.

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be made known to the Courts, yet the consent which a person gives to the taking of his property by a ruffian who holds a pistol to his breast is a circumstance altogether immaterial.

DACOITY.

His Lordship in Council will perceive that we have provided punishment of exemplary severity for that atrocious crime which is designated in the Regulations of Bengal and Madras by the name of *Dacoity*. This name we have thought it convenient to retain for the purpose of denoting, not only actual gang-robbery, but the attempting to rob when such an attempt is made or aided by a gang.

RECEIVING STOLEN GOODS.

The law relating to the offence of receiving stolen goods appears to require no comment.

CHEATING.

The offence of cheating must, like that of extortion, be committed by the wrongful obtaining of a consent. The difference is that the extortioner obtains the consent by intimidation, and the cheat by deception. There is no offence in the Code with which we have found it so difficult to deal as that of cheating. It is evident that the practising of intentional deceit for purposes of gain ought sometimes to be punished. It is equally evident that it ought not always to be punished. It will hardly be disputed that a person who defrauds a banker by presenting a forged cheque, or who sells ornaments of paste as diamonds, may with propriety be made liable to severe penalties. On the other hand, to punish every defendant who obtains pecuniary favours by false professions of attachment to a patron, every legacy-hunter who obtains a bequest by cajoling a rich testator, every debtor who moves the compassion of his creditors by overcharged pictures of his misery, every petitioner who, in his appeals to the charitable, represents his distresses as wholly unmerited, when he knows that he has brought them on himself by intemperance and profusion, would be highly inexpedient. In fact, if all the misrepresentations and exaggerations in which men indulge for the purpose of gaining at the expense of others were made crimes, not a day would pass in which many thousands of buyers and sellers would not incur the penalties of the law. It happens hourly that an article which is worth ten rupees is affirmed by the seller to be cheap at twelve rupees, and by the buyer to be dear at eight rupees. The seller comes down to eleven rupees, and declares that to be his last word. The buyer rises to nine, and says that he will go no higher. The seller falsely pretends

that the article is unusually good of its kind, the buyer that it is unusually bad of its kind; the seller that the price is likely soon to rise, the buyer that it is likely soon to fall. Here we have deceptions practised for the sake of gain, yet no judicious legislator would punish these deceptions. A very large part of the ordinary business of life is conducted all over the world, and nowhere more than in India, by means of a conflict of skill, in the course of which deception to a certain extent perpetually takes place. The moralist may regret this; but the legislator sees that the result of the attempts of the buyer and seller to gain an unfair advantage over each other is that, in the vast majority of cases, articles are sold for the prices which it is desirable that they should fetch; and therefore he does not think it necessary to interfere. It is enough for him to know that all this great mass of falsehood practically produces the same effect which would be produced by truth; and that any law directed against such falsehood would, in all probability, be a dead letter, and would, if carried into rigorous execution, do more mischief in a month than all the lies which are told in the making of bargains throughout all the bazars of India produce in a century.

If, then, it be admitted that many deceptions committed for the sake of gain ought to be punished, and that many such deceptions ought not to be punished, where ought the line to run?

It appears to us that the line which we have drawn is correct in theory, that it is not more inconvenient in practice than any other line must be which can be drawn while the civil law of India remains in its present state, and that it will be unexceptionable whenever the civil law of India shall be ascertained, digested, and corrected.

We propose to make it cheating to obtain property by deception in all cases where the property is fraudulently obtained, that is to say, in all cases where the intention of the person who has by deceit obtained the property was to cause a distribution of property which the law pronounces to be a wrongful distribution, and in no other case whatever. However immoral a deception may be, we do not consider it as an offence against the rights of property, if its object is only to cause a distribution of property which the law recognizes as rightful. A few examples will shew the way in which this principle will operate.

A intentionally deceives Z into a belief that he is strongly attached to Z. A thus induces Z to make a will, by which a large legacy is left to A. Here A's conduct is immoral and scandalous. But still A has a legal right on Z's death to receive the legacy.

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Even if the clearest proofs of A's insincerity are laid before a tribunal, even if A in open Court avows his insincerity, the will cannot, on that account, be set aside. The gain, therefore, which A obtains under Z's will is not, in the legal sense of the expression, wrongful gain. He has practised deception. He has thus caused gain to himself, and loss to others. But that gain is a gain to which the civil law declares him entitled, and which the civil law will assist him to recover if it be withheld from him. That loss is a loss with which the civil law declares that the losers must put up. A therefore has not committed the offence of cheating under our definition.

But suppose that the civil law should contain, as we think that it ought to contain, a provision declaring null a will made in favour of strangers by a testator, who erroneously believed his children to be dead. And suppose that A intentionally deceives Z into a belief that Z's only son has been lost at sea, and by this deception induces Z to make a will by which every thing is left to A. Here, the case will be different. The will being null, any property which A could obtain under that will would be property which he had no legal right so to obtain, and to which another person had a legal right. The object of A has therefore been wrongful gain to himself, attended with wrongful loss to another party. A has therefore, under our definition, been guilty of cheating.

Again, take the case which we before put of a buyer and a seller. They have told each other many untruths, but none of those untruths was such as, after the article had been delivered, and the price paid, would be held by a Civil Court to be a ground for pronouncing that either of them possessed what he had no right to possess. Though the buyer has falsely depreciated the article, yet when he takes it, and pays for it, the legal right to it is transferred to him, as well as the possession. Though the seller has falsely extolled the article, yet when he receives the price, and delivers the article, the legal right to the price passes with the possession. However censurable, in a moral point of view, the deceptions practised by both may have been, yet those deceptions were intended to produce a distribution of property strictly legal. Neither the buyer nor the seller, therefore, has been guilty of cheating. But if the seller has produced a sample of the article, and has falsely assured the buyer that the article corresponds to that sample, the case is different. If the article does not correspond to the sample, the buyer is entitled to have the purchase-money back. The seller has taken and kept the purchase-

money without having a legal right to take or keep it, and it may be recovered from him by a legal proceeding. His gain is therefore wrongful, and is attended with wrongful loss to the buyer. He is therefore guilty of cheating under the definition.

So, if the seller passes off ornaments of paste on the buyer for diamonds, the price which the seller receives is a price to which he has no right, and which the buyer may recover from him by an action. Here therefore the object of the seller has been wrongful gain attended with wrongful loss to the buyer. The seller is therefore guilty of cheating.

So, if the buyer, intending to acquire possession of the goods without paying for them, induces the seller by deception to take a note which the buyer knows will be dishonoured, the buyer is guilty of cheating. His object is to retain in his own possession money which he is legally bound to pay to the seller. The gain which he makes by retaining the money is wrongful gain, and is attended with wrongful loss to the seller. He is, therefore, within the definition.

Whether the principle on which this part of the law is framed be a sound principle, is a question which will be best determined by examining, first, whether our definition excludes any thing that ought to be included, and, secondly, whether it includes any thing that ought to be excluded.

It can scarcely, we think, be contended that our definition excludes any thing that ought to be included. For surely it would be unreasonable to punish, as an offence against the right of property, an act which has caused, and was intended to cause, a distribution of property which the law declares to be right, and refuses to disturb. If such an act be an offence, it must be an offence on some ground distinct from the effect which it produces on the state of property. Thus, if a person to whom a debt is due, thinking that he shall obtain payment more easily if he assumes the appearance of being in the public service, wears a badge of office which he has no right to wear when he goes to make his demand, he is guilty of the offence defined in cl. 150; but if he gains only what he has a legal right to possess, if he deprives the debtor only of that which the debtor has no legal right to retain, he is not a wrong-doer as respects property, inasmuch as he has only rectified a wrong distribution of property.

Indeed, it appears to us that there is the strongest objection to punishing a man for a deception, and yet allowing him to retain what he has gained by that deception. What the civil law ought to say may be doubtful.

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But there can be no doubt that the civil and criminal law ought to say the same thing; that the one ought not to invite, while the other repels; that the Code ought not to be divided against itself. To send a person to prison for obtaining a sum of money, and yet to suffer him to keep that sum of money, is to hold out at once motives to deter and motives to incite. Humanity requires that punishment should be the last resource, a resource only employed when no other means can be found of producing the desired effect. Penal laws clearly ought not to be made for the preventing of deception, if deception could be prevented by means of the Civil Code. To tempt men, therefore, to deceive by means of the Civil Code, and then to punish them for deceiving, is contrary to every sound principle.

We are, therefore, not apprehensive that we shall be thought to have granted impunity to any deception which ought to be punished as cheating.

But it is possible that our definition may be thought to include much that ought to be excluded. It certainly includes many acts which are not punishable by the law of England or of France. We propose to punish as guilty of cheating a man who, by false representations, obtains a loan of money, not meaning to repay it; a man who, by false representations, obtains an advance of money, not meaning to perform the service, or to deliver the article for which the advance is given; a man who, by falsely pretending to have performed work for which he was hired, obtains pay to which he is not entitled.

In all these cases there is deception. In all, the deceiver's object is fraudulent. He intends in all these cases to acquire or retain wrongful possession of that to which some other person has a better claim, and which that other person is entitled to recover by law. In all these cases, therefore, the object has been wrongful gain, attended with wrongful loss. In all, therefore, there has, according to our definition, been cheating.

We cannot see why such acts as these should be treated as mere civil injuries—why they should be classed with the mere non-payment of a debt, and the mere non-performance of a contract. They are infractions of a legal right effected by deliberate dishonesty. They are more pernicious than most of the acts which will be punishable under our Code.

They indicate more depravity, more want of principle, more want of shame, than most of the acts which will be punishable under our Code. We punish the man who gives another an angry push. We punish the

man who locks another up for a morning. We punish the man who makes a sarcastic epigram on another. We punish the man who merely threatens another with outrage. And surely the man who, by premeditated deceit, enriches himself to the wrongful loss, perhaps to the utter ruin, of another, is not less deserving of punishment.

That some deceptions of this sort ought to be punished, is admitted. But almost every argument which can be urged for punishing any is an argument for punishing all. The line between wilful fraudulent deception and good faith is a plain line. If there is any difficulty in applying it, that difficulty will arise, not from any defect in the line, but from the want of evidence in particular cases. But we are unable to find any reason for distinguishing one sort of fraudulent deception from another sort. The French Courts apply a test which appears to us to be very objectionable. They have decided that it is not *escroquerie* to cheat by false promises, or by exciting chimerical hopes, unless the sufferer had reasons of weight for believing that the promises were sincere, and the hopes well grounded.\* This rule seems to us to be a license for deception granted to cunning against simplicity. A weak and credulous person is more easily imposed on than a judicious and discerning person. And just so an infant is poisoned with a dose of laudanum which would hardly put a grown person to sleep; yet the poisoner is a murderer: a pregnant woman is grievously hurt by a blow which would make no impression on a boxer; yet the person who gives such a blow is punished with exemplary severity. The law in such cases enquires only whether the harm has been voluntarily caused or no. And why should the violation by deceit of the right of property be treated differently? The deceiver proportions his artifices to the mental strength of those whom he has to deal with, just as the prisoner proportions his drugs to their bodily strength. And we see no more reason for exempting the deceiver from punishment, because he has effected his purpose by a gross fiction which could have duped only a weak person, than for exempting the poisoner from punishment because he has effected his purpose with a few drops of laudanum, which could have been fatal only to a young child.

Some persons may be startled at our proposing to punish as a cheat every man who obtains a loan by making promises of payment which he does not mean to keep. But let it be considered that a debtor, though

\* Paillet Manuel de Droit Francois. Note on cl. 408 of the Penal Code.

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he may have contracted his debts honestly, though it may be from absolute inability that he does not pay them, though his misfortunes may be the effect of no want of industry or caution on his part, is now actually liable to imprisonment. Surely it is unreasonable to detain in prison the man who, by mere misfortune, has involuntarily violated the rights of property, and to leave unpunished the man who has voluntarily, and by wilful deceit, attacked those rights, if only he is lucky enough to have money to satisfy the demands on him.

For example, A and B both borrow money from Z. A obtains it by boasting falsely of his great means, of the large remittances which he looks for from England, of his expectations from rich relations, of the promises of preferment which he has received from the Government. Having obtained it, he secretly embarks on board of a ship, intending to abscond without repaying what he has borrowed. B, on the other hand, has obtained a loan without the smallest misrepresentation, and fully purposes to repay it. The failure of an agency-house in which all his funds were placed renders it impossible for him to meet his engagements. Can it be doubted which of these two debtors ought rather to be sent to prison? Can it be doubted that A is a proper subject of punishment, and that B is not so? Yet at present A, if he is arrested before the ship sails, and lays down the money, enjoys entire impunity, while B may pass years in a jail. It would be improper for us here to discuss at length the question of imprisonment for debt. But it seems clear that whether it be or be not proper that a debtor, as such, should be imprisoned, a distinction ought to be made between the honest and dishonest debtor. We are inclined to believe that the indiscriminate imprisonment of all debtors would be found to be unnecessary if this distinction were made. But while they are all put on the same footing the law must be formed upon a rough calculation of the chances of dishonesty. All must be treated worse than honest debtors ought to be treated, because none are treated so severely as dishonest debtors ought to be treated. A respectable man must be imprisoned for a storm, a bad season, or a fire, because his dishonest neighbour is not liable to criminal proceedings for cheating. We are satisfied that the only way to get rid of imprisonment for debt, as debt, is to extend the penal law on the subject of cheating in a manner similar to that in which we propose to extend it.

The provisions which we have framed on the subject of fraudulent bankruptcy are necessarily imperfect, and must remain so,

until the whole of that important part of the law has undergone an entire revision.

## MISCHIEF.

The provisions which we propose on the subject of mischief do not appear to us to require any explanation.

## TRESPASS.

We have given the name of trespass to every usurpation, however slight, of dominion over property. We do not propose to make trespass, as such, an offence, except when it is committed in order to the commission of some offence injurious to some person interested in the property on which the trespass is committed, or for the purpose of causing annoyance to such a person. Even then, we propose to visit it with a light punishment, unless it be attended with aggravating circumstances.

These aggravating circumstances are of two sorts. Criminal trespass may be aggravated by the way in which it is committed. It may also be aggravated by the end for which it is committed.

There is no sort of property which it is so desirable to guard against unlawful intrusion as the habitations in which men reside, and the buildings in which they keep their goods. The offence of trespassing on these places we designate as house-trespass, and we treat it as an aggravated form of criminal trespass.

House-trespass again may be aggravated by being committed in a surreptitious or in a violent manner. The former aggravated form of house-trespass we designate as lurking house-trespass; the latter we designate as house-breaking. Again, house-trespass in every form may be aggravated by the time at which it is committed. Trespass of this sort has, for obvious reasons, always been considered as a more serious offence, when committed by night, than when committed by day. Thus we have four aggravated forms of that sort of criminal trespass which we designate as house-trespass, lurking house-trespass by night, and house-breaking by night.

These are aggravations arising from the way in which the criminal trespass is committed. But criminal trespass may also be aggravated by the end for which it is committed. It may be committed for a frolic. It may be committed in order to a murder. It may also often happen that a criminal trespass which is venial, as respects the mode, may be of the greatest enormity as respects the end; and that a criminal trespass committed in the most reprehensible mode may be committed for an end of no great atrocity. Thus, A may commit house-breaking by night for



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the purpose of playing some idle trick on the inmates of a dwelling. B may commit simple criminal trespass by merely entering another's field for the purpose of murder or gang-robbery. Here, A commits trespass in the worse way. B commits trespass

with the worse object. In our provisions, we have endeavoured to combine the aggravating circumstances in such a way that each may have its due effect in settling the punishment.

*Of Theft.*

**378.** Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

*Explanation 1.*—A thing, so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

*Explanation 2.*—A moving, effected by the same act which effects the severance, may be a theft.

*Explanation 3.*—A person is said to cause a thing to move by removing an obstacle which prevented it from moving, or by separating it from any other thing, as well as by actually moving it.

*Explanation 4.*—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

*Explanation 5.*—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority, either express or implied.

*Illustrations.*

(a.) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree in order to such taking, he has committed theft.

(b.) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(c.) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(d.) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(e.) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith, and sells it. Here the plate was not in Z's possession. It could not therefore be taken out of Z's possession; and A has not committed theft, though he may have committed criminal breach of trust.

(f.) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(g.) A finds a ring lying on the high road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(h.) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with

the intention of taking the ring from the hiding place, and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(i.) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault, has not committed theft, inasmuch as what he did was not done dishonestly.

(j.) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(k.) Again, if A, having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he had borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(l.) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft.

(m.) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(n.) A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z, her husband. Here it is probable that A may conceive that Z's wife is authorized to give away alms. If this was A's impression, A has not committed theft.

(o.) A is the paramour of Z's wife. She gives A valuable property which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(p.) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here, as A does not take dishonestly, he does not commit theft.

### 379. Whoever commits theft shall be punished with imprisonment of

Punishment for theft.

either description for a term which may extend to three years, or with fine, or with both.

#### CHARGE.

THAT you, on or about the      day of      , at      , committed theft of      , the property of      , valued at Rs.      , and thereby committed an offence punishable under s. 379 of the Indian Penal Code, and within, &c.

#### CHARGE FOR THEFT AFTER A PREVIOUS CONVICTION.

I, [name and office of Magistrate, &c.], hereby charge you [name of accused person] as follows:—

That you, on or about the      day of      , at      , committed theft, and thereby committed an offence punishable under s. 379 of the Indian Penal Code and within the cognizance of the Court of Session [or High Court, or Magistrate, as the case may be].

And you the said [name of accused] stand further charged that you, before the committing of the said offence, that is to say, on the      day of      , had been convicted by the [state Court by which conviction was had] at      , of an offence punishable under Chapter XVII. of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night [describe the offence in the words used in the section under which the accused was convicted], which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under s. 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (III.).

THE offence of a person who makes away with property which has been placed in his charge and possession is not theft, but criminal breach of trust.—*Bharat Chunder Christian, Appellant*, 1 W. R. 2. [Kemp and Glover, JJ. Aug. 8, 1864.]

**THEFT** is defined (s. 378) to be a dishonest taking of any moveable property out of the possession of any person without that person's consent.—*Queen v. Madaree Chowkeedar*, 3 W. R. 2. [Peacock, C.J., and Kemp and Glover, JJ. Feb. 17, 1865.]

A PERSON can be convicted of abetment of theft under the 1st explanation of s. 107 of the Penal Code only if he either procures or attempts to procure the commission of the theft. Mere subsequent knowledge of the offence is insufficient.—*Queen v. Shumeeruddeen and others*, 2 W. R. 40. [Kemp and Glover, JJ. Mar. 14, 1865.]

THE theft and the taking and retention of stolen goods form one and the same offence, and cannot be punished separately.—*Queen v. Sreemunt Adup*, 2 W. R. 62. [Glover, J. April 16, 1865.]

HOUSE-BREAKING by night and theft form a single and entire offence, and cannot be punished separately.—*Queen v. Tonaokooch*, 2 W. R. 63. [Jackson and Glover, JJ. April 19, 1865.]

THE term "dishonest" is applied to a person who does any thing with the intention of causing wrongful gain or wrongful loss. Where the accused forcibly seized a woman's bullocks for something which her husband may have owed in his lifetime, he was held to have caused wrongful loss, and therefore guilty of theft.—*Queen v. Preonath Banerjee*, 1 Wyman's Rev., Crim., and Civ. Reporter, p. 60; 5 W. R. 68. [Jackson, J. April 16, 1866.]

It is illegal to convict prisoners of mischief as well as of theft, the offences charged being that they had cut down Government trees without leave, and appropriated them.—*Reg. v. Narayan Krishna*, 2 Bom. H. C. R. 392. [Couch, C.J., and Newton, J. June 27, 1866.]

THE prisoner, acting *bona fide* in the interest of his employers, and finding a party of fishermen poaching on his master's fisheries, took charge of the nets, and retained possession of them, pending the orders of his employers. Held that the prisoner was not guilty of theft.—*Queen v. Nobin Chunder Holder*, 6 W. R. 79. [Kemp and Markby, JJ. Sep. 28, 1866.]

**THEFT** is the sequel of, and cannot be separated from, house-breaking. A cumulative sentence of three years' imprisonment was held to be illegal in such a case.—*Mussahur Daoudh*, 6 W. R. 92. [Kemp and Markby, JJ. Dec. 19, 1866.]

**STEALING** property, and then destroying it, are but one offence, *viz.*, theft—not two, theft and mischief; but the fact that the offender has rendered the property irrecoverable should be considered in awarding punishment.—*Crown v. Hamira*, Panj. Rec., No. 37 of 1866.

No security can legally be demanded from persons convicted of theft.—*Queen v. Kunee Sonar*, 7 W. R. 57. [Seton-Karr and Markby, JJ. April 5, 1867.]

A PERSON acting under a claim of right (however ill-founded such claim may be) is not guilty of theft by asserting it.—*Queen v. Ram Churn Singh*, 7 W. R. 57. [Seton-Karr and Markby, JJ. April 15, 1867.]

SEPARATE convictions and sentences under ss. 494 and 397, under ss. 457 and 380 of the Penal Code, were set aside, and the convictions under s. 429 in the former case, and under s. 457 in the latter, allowed to stand.—*Queen v. Sahrae and others*, 8 W. R. 31. [Jackson and Hobhouse, JJ. July 1, 1867.]

WHERE a Court finds that parties came with a number of armed men, and carried off a crop, the finding amounts to that of a forcible carrying off without the consent of the owner. Even if they took no part in the actual taking, they must, with reference to s. 114, Penal Code, be considered guilty of the substantive offence under s. 378.—*Queen v. Shib Chunder Mundle and another*, 8 W. R. 59. [Kemp and Glover, JJ. Aug. 5, 1867.]

A PRISONER who consented to form one of a party who committed theft, and resiled from his agreement, but was present at the commission of theft, does not come within cl. 2, s. 107, Penal Code, and ought not to have been convicted of the theft, but of the abetment thereof under cl. 3, s. 107, and s. 109, Penal Code, read together.—*Queen v. Boobhuin Mooshur*, 8 W. R. 78. [Glover, J. Oct. 30, 1867.]

WHERE loss is occasioned to a person whose property has been stolen, it is not illegal for the trying Magistrate to award a portion of the fine inflicted on the accused as amends to the owner of such property, although the stolen property is recovered and restored to the owner.—Reg. v. Yessáppá bin Ningáppá, 5 Bom. H. C. R. 41. [Newton, Offg. C.J., and Tucker, J. May 20, 1868.]

CONVICTION and sentence by a Magistrate reversed, as the act of which the accused were convicted—taking pods (almost valueless) from a tree standing upon Government waste ground—came within the meaning of s. 95 of the Penal Code, and did not, therefore, amount to an offence.—Reg. v. Kásyá bin Rávji, 5 Bom. H. C. R. 35. [Newton, Offg. C.J., and Tucker, J. May 20, 1868.]

WHERE a policeman in whose sight a theft was committed arrested the thief, and, being himself unable to take or send the accused to a Magistrate, sent a report on which the Magistrate issued a warrant, *held* that, under these circumstances, the accused was legally brought before the Magistrate.—Reg. v. Mahipyá valad Bomyá Mahár, 5 Bom. H. C. R. 99. [Newton and Tucker, JJ. Sep. 24, 1868.]

A CONVICTION for theft under the Penal Code is illegal if the owner has given up all property in, and all possession of, the subject of the alleged theft. Thus, if a man digs up the carcass of a bullock, which the owner, suspecting to have been poisoned, caused to be buried, he cannot be convicted of theft.—Pro., Feb. 5, 1869, 4 Mad. H. C. R. Ap. 30.

WHERE, in a case in which a prisoner was convicted of theft and also of receiving stolen property, the sentence passed was really one for theft, the High Court nevertheless refused to allow the conviction for receiving stolen property to remain on the record against the accused, and reversed it.—Queen v. Sheeb Chunder Haree and others, 11 W. R. 12n. [Jackson and Hobhouse, JJ. Mar. 1, 1869.]

A MUHAMMADAN married woman may be convicted of theft, or abetment of theft, in respect of the property of her husband.—Reg. v. Khátábái, wife of Sheik Ismáel, 6 Bom. H. C. R. 9. [Tucker and Gibbs, JJ. Mar. 4, 1869.]

LOODUN was in terms of intimacy with Marwareed, who encouraged his visits; and when Loodun's father sent him away with a view to break-up the connection, the woman followed him. She was brought back, and Loodun returned and renewed the intimacy with her. He was prohibited from his father's house, and carried away things which he gave to the woman. Loodun was convicted by the Magistrate of house-trespass in order to commit theft, and Marwareed of abetment of that offence. *Held* that her conviction could not be sustained, as no act subsequent to the commission of an offence can be construed into an abetment.—Crown v. Loodun, Panj. Rec., No. 11 of 1869.

THE moving of the same act which effects the severance may constitute a theft. Thus the cutting down of trees without removing them may amount to theft.—Pro., Oct. 22, 1870, 5 Mad. H. C. R. Ap. 36.

THE prisoner was convicted of theft on his own confession. The charge to which the prisoner pleaded did not allege the taking out of the possession of some person dishonestly, and there was no evidence of such taking. *Held* that the conviction was bad.—Pro., Oct. 28, 1870, 5 Mad. H. C. R. Ap. 37.

A HINDU woman who removes from the possession of her husband, and without his consent, her pallá or stridhan, cannot be convicted of theft, nor can any person who joins her in removing it be convicted of that offence.—Reg. v. Náthá Kalyán and Bái, 8 Bom. H. C. R. 11. [Gibbs and Melvill, JJ. Jan. 9, 1871.]

THE mere assertion of a fair claim of property or right, or the mere existence of a doubt as to right, is not sufficient to justify an acquittal in a case of plunder of crops. The claim to the property must be proved by evidence to be fair and good.—Nassib Chowdhry v. Nannoo Chowdhry, 5 W. R. 47. [Bayley and Mitter, JJ. Mar. 25, 1871.]

S. 378 of the Penal Code does not include under the offence of theft the case when one joint proprietor takes into his own sole possession property belonging to himself and his co-proprietors which had previously been in their joint custody. K, the gomasta of a shop, was coming out of the Small Cause Court with some account-books belonging to that shop. A, who had a share in that shop, took them out of the possession of K, and kept them against the will of K, saying they were his. The Deputy Magistrate found A guilty of theft, and convicted him. On reference, the High Court quashed the conviction, on the grounds: (1) that when property is in the possession of a person's servant, it is in that person's possession within the meaning of s. 27 of the Penal Code, and, therefore,

s. 378 does not include under the offence of theft the case where one joint-proprietor takes into his own sole possession property belonging to himself and his co-proprietors, which had been previously in their joint possession; (2) that the books were not taken dishonestly, and that, if any offence was committed, it was not theft.—*Kiamuddin v. Allah Buksh*, 15 W. R. 51; 6 B. L. R. Ap. 133; 13 B. L. R. 210n. [*Norman, Off. C.J.*, and *Loch, J.* April 15, 1871.]

A *MERE* plea by an accused that the property of the theft of which he is charged in his own property, unsupported by proof or by some circumstances which tend to indicate that there is some truth in the statement, is not sufficient to entitle him to be summarily discharged.—*Runnoo Singh v. Kali Churn Misser and others*, 16 W. R. 18; 7 B. L. R. Ap. 55. [*Bayley and Paul, JJ.* July 11, 1871.]

A *BOAT* may be the subject of theft. Although under s. 442 it is for certain purposes classed with houses, it does not cease to be moveable property under s. 378.—*Queen v. Mahar Dowalia and others*, 16 W. R. 53. [*Kemp, Off. C.J.*, and *Ainslie, J.* Oct. 6, 1871.]

*INABILITY* to prove a prescriptive right to fish within certain limits free from payment of rent is quite distinct from the want of right of any kind to fish therein, rendering a person so fishing liable to be brought up for the theft of fish taken by him.—*Khetter Nathi Dutt v. Indro Jalla and others*, 16 W. R. 68. [*Kemp and Jackson, JJ.* Dec. 16, 1871.]

THE carrying off of certain buffaloes belonging to the complainant by order of the accused, and the retention of them in the custody of the latter's servant, were held to amount to an abetment of theft as defined in the Penal Code.—*Tarinee Prosau Banerjee and another, Petitioners*, 18 W. R. 8. [*Kemp and Glover, JJ.* June 14, 1872.]

*ACCUSED* was convicted by an Assistant Magistrate of theft of paddy. The facts found were that prisoner was found in possession of rice not thrashed in the usual way, and that, having no paddy-land of his own, he failed to account satisfactorily for the possession of the rice. *Held* that this was such a case as no Judge would leave to a jury, and that the conviction must be quashed as founded upon evidence which, if all true, would not justify the inference of guilt. The meaning of the term "*corpus delicti*" explained.—*Pro.*, Feb. 18, 1873, 7 Mad. H. C. R. Ap. 19.

THE taking of fish in that portion of a navigable river over which a right of *jalkar* exists in another person does not fall within s. 378, Penal Code.—*Horimoti Moddock v. Deno Nath Malo and others*, 19 W. R. 47. [*Kemp and Pontifex, JJ.* Mar. 20, 1873.]

WHERE the accused caught fish in a portion of a navigable river which was claimed by the prosecutor, it was held they could not be convicted of theft, and that, if the right of the prosecutor was infringed, he could sue in the Civil Court for damages.—*Bhusun Parui and others v. Denonath Banerjee*, 20 W. R. 15. [*Jackson and Mitter, JJ.* May 7, 1873.]

*DISHONEST* removal of salt naturally formed in a creek, which was under the supervision of an officer belonging to the Customs Department, constitutes theft, the salt having been legally appropriated by such officer (*per Bayley and West, JJ.*). But removal for one's own use from a creek of such salt not legally appropriated constitutes no offence either under the Penal Code or Acts XXXI. of 1850 or XXVII. of 1837, though under s. 7 of the latter Act, made applicable by s. 8 of the former, the salt removed becomes liable to detention (*per Lloyd and Kimball, JJ.*).—*Reg. v. Mānsang Bhāvsang*, 10 Bom. H. C. R. 74. [*Bayley and West, JJ.* May 21, 1873.]

IN a charge for stealing it must be proved that at the time of the act being done the property stolen was in the possession of the prosecutor.—*Hossonee Sheikh v. Rajkrishna Chatterjee*, 20 W. R. 80. [*Phear and Morris, JJ.* Nov. 18, 1873.]

A SENTENCE of whipping cannot, with reference to Act VI. of 1864, s. 7, be passed on a conviction for theft under s. 379, Penal Code, as the former section only provides for sentences of imprisonment for a term not exceeding three years.—*Queen v. Esan Chunder Doy*, 21 W. R. 40. [*Jackson and Ainslie, JJ.* Feb. 5, 1874.]

POSSESSION of property which has been stolen from the owner is generally, at best, only evidence of theft when the date of the theft is so recent as to make it reasonable to presume in the absence of explanation that the person in whose possession the property is found must have obtained the possession by stealing.—*Queen v. Poromeshur Aheer*, 23 W. R. 16. [*Phear and Morris, JJ.* Jan. 8, 1875.]

THE High Court declined to interfere with the order of a Deputy Magistrate, who, in a case of theft, dismissed the complaint, and fined the complainant under s. 209 of the

Code of Criminal Procedure (Act X. of 1872), corresponding with s. 250 of the new Code of Criminal Procedure (Act X. of 1882), for making a frivolous and vexatious complaint.—*Kali Churn Lahiree v. Shoshee Bhooshun Sanyal*, 23 W. R. 17. [Phear and Ainslie, JJ. Jan. 13, 1875.]

THE illegal seizure and impounding of cattle is not theft within the meaning of the Penal Code, even if effected with the malicious intent of subjecting the owners to additional expense, inconvenience, and annoyance. A Sessions Judge has no power to release on bail persons convicted by the Magistrate, pending a reference to the High Court under Act X. of 1872, s. 296 (corresponding with Act X. of 1882, s. 438).—*Aradhun Mundul v. Myan Khan Takadgeer* and another, 24 W. R. 7. [Glover and Mitter, JJ. June 4, 1875.]

ALTHOUGH a person who is convicted of theft cannot, in respect of the same property, be convicted at the same time of receiving stolen property, yet a person who is acquitted of the theft of any property, or who is not charged with stealing it, may, in respect of the identical property, be charged with, and convicted of, receiving it, knowing it to be stolen: so that the mere fact of a person's having once been acquitted of the charge of stealing any property does not of itself prevent his trial at any future time on the charge of receiving the same property knowing it to be stolen.—*Queen v. Nyaz Ali*, 25 W. R. 47. [Kemp and Glover, JJ. May 25, 1876.]

A DOUBLE sentence for theft and mischief is illegal and improper.—*Bichuk Aheer v. Auhuck Bhooneea* and others, 6 W. R. 5. [Jackson and Campbell, JJ. June 18, 1876.]

POSSESSION of wood by a forest-inspector, who is a servant of Government, is possession of the Government itself; and a dishonest removal of it, without payment of the necessary fees, from his possession, albeit with his actual consent, constitutes theft within the meaning of s. 378, if that consent was unauthorized or fraudulent.—*Reg. v. Hanmanta* and others, 1 L. R., 1 Bom. 610. [Melvill and Kemball, JJ. Feb. 26, 1877.]

A SOUGHT the aid of B with the intention of committing a theft of the property of B's master. B, with the knowledge and consent of his master, and for the purpose of procuring A's punishment, aided A in carrying out his object. On the prosecution of A for theft, *held* that, as the property removed was so taken with the knowledge of the owner, the offence of theft had not been committed; *held* further that it is not necessary to an indictment for the abetment of an abetment of an offence to show that such offence was actually committed.—*Empress v. Troyluckho Nath Chowdhry*, 1 L. R., 4 Cal. 366; 3 C. L. R. 525. [Jackson and White, JJ. Nov. 12, 1878.]

THE accused caught fish in the Sundri dund, a sheet of water five miles long by twenty feet broad. The right of fishing in this and other dunds had been leased to a contractor by the Government. *Held* that the fish in the pond were not in the possession of any person within the meaning of s. 378, and could not, therefore, be the subject of theft.—*Crown v. Jamal*, Panj. Rec., No. 11 of 1878.

S A, a resident of foreign territory, was found concealed with three companions (who were Jowaki Afridis), all armed to the teeth, in a deserted house in Surgul, Kohat district. Some Government camels were grazing in the village, and the theory for the prosecution was that S A and the other accused came down to steal these camels, or such other property as they might be able to lay hand upon. The Deputy Commissioner convicted all the accused under ss. 109 and 382, and the Commissioner, to whom the proceedings went up for confirmation, altered the conviction to one under s. 393. *Held* (by a majority of the Court, Elsmie, J., dissenting) that the conviction could not be sustained. *Per* Smyth, J.—The mere assembling of a number of persons together with a general intention of committing theft, and not for the purpose of committing a specific theft or theft of specific property, cannot be considered to amount to the abetment of an offence of theft, so as to be punishable under ss. 116 and 379, or, as in the present case, under ss. 116 and 382. There must be some design to commit a specific offence before a person can be held guilty of abetment of such offence by having conspired with others to commit it. *Per* Elsmie, J., *contra*.—That the case clearly came within the meaning of the 2nd clause of s. 107, and that the conviction was sustainable. *Per* Plowden, J.—On a charge of abetment of conspiracy, it is necessary to prove, and it ought therefore to be alleged, not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence (specify the offence), but also that some act or illegal omission (specify the particular act or omission) took place in pursuance of that conspiracy, and in order to the commission of the said offence. That in this case the facts alleged were not proved with sufficient certainty to justify a conviction, as it could not be said positively that the purpose of

the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there. *Held* further (*per* Plowden, J.)—That a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft), as opportunity should offer, within a determinate area (as, for instance, a village), would not be bad as being too vague.—*Sher Ali v. Empress*, Panj. Rec., No. 18 of 1879.

WHERE an accused person, who had been previously convicted of theft under s. 379, was sentenced to whipping in addition to imprisonment upon a subsequent conviction of house-breaking by night with intent to commit theft under s. 457, and it appeared that theft was distinctly charged in the formal charges prepared by the Court, though s. 457 alone was cited, and it was found that the theft was completed, *held* by the Full Bench that the omission to formally charge the accused with, and convict him of, theft, under s. 379 or s. 380, was not a ground for setting aside the sentence of whipping on the revision side of the Court, such omission not having in any way prejudiced the accused in his defence.—*Empress v. Radha*, Panj. Rec., No. 14 of 1880.

A HINDU, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family he lived in commensality with it, but he did not treat such property as joint family property, but as his own property. *Held* that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted of theft in respect of it. It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property.—*Empress v. Sita Ram Rai*, I. L. R., 3 All. 181. [Straight, J. Aug. 16, 1880.]

PERSONS removing property under the provisions of the rent law relating to distraint ought not to be proceeded against under the criminal law, but the parties aggrieved by a wrongful distraint should have recourse to the remedy provided by Act VIII. of 1869 (B.C.).—*Sheikh Aghani v. Bhagi Halwai*, 8 C. L. R. 204. [Pontifex and Field, JJ. Mar. 9, 1881.]

WHERE the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond (which tended to show that defendant had paid more than it was alleged had been paid by him), snatched up the bond which was lying besides the arbitrator, ran away, and refused to produce it, *held* that the offence committed was not theft, but secreting a document under s. 204 of the Penal Code.—*Subramania Ghanapati v. Reg.*, I. L. R., 3 Mad. 261. [Turner, C.J., and Muttusami Ayyar, J. Sep. 2, 1881.]

A SWAMP, the property of Government, having been surrounded with police-guards by Government to prevent salt being removed, *held* that the taking against the will of Government, and with the intention of obtaining an unlawful gain of salt which had been spontaneously produced on the swamp, was theft.—*Reg. v. Tamma Ghanaya*, I. L. R., 4 Mad. 228. [Turner, C.J., and Kernan, J. Oct. 19, 1881.]

THE wrongful taking of fish from a creek is not theft.—*Reg. v. Revu Pothadu*, I. L. R., 5 Mad. 300. [Muttusami Ayyar and Tarrant, JJ. Aug. 5, 1882.]

WHERE property is in the joint possession of two persons as joint owners, and one of them dishonestly removes it from the possession of the other, the removal constitutes theft.—*Viramkutti v. Chiyamu*, I. L. R., 7 Mad. 557. [Turner C.J., and Hutchins, J. Aug. 14, 1884.]

TO constitute theft it is sufficient if property is removed, against his wish, from the custody of a person who has an apparent title, or even a colour of right, to such property.—*Queen-Empress v. Gungaram Sanaram*, I. L. R., 9 Bom. 135. [West and Scott, JJ. Oct. 29, 1884.]

WHERE the accused were found fishing without permission in an enclosed tank belonging to the municipality of the town of Sirsi, it was held that they could be convicted of theft, as the tank from which the fish were taken was apparently an enclosed tank, and the fish were, therefore, restrained of their natural liberty, and liable to be taken at any time according to the pleasure of the owner, and were, therefore, subjects of theft.—*Queen-Empress v. Shaikh Adam valad Shaikh Farid*, I. L. R., 10 Bom. 193. [Birdwood and Jardine, JJ. Jan. 8, 1886.]

**THEFT** of joint property may be committed by a co-parcener if he takes it from joint possession, and converts such possession into separate possession. This was a case referred for the orders of the High Court under s. 438 of the Code of Criminal Procedure (Act X. of 1882) by the District Magistrate. The case was stated as follows: "P, the accused, a boy of 18, took a cart from his father's mandi, or shop, without his father's knowledge, and sold it, and appropriated the proceeds. He admitted all this, but pleaded, first, that he was undivided from his father, and was a joint owner of the cart; and, secondly, that the reason he took the cart was that his father, who was married a second time, does not support either him or his mother. He kept, he said, part of the proceeds for his own support, and sent the rest to his mother. The Second-class Magistrate took the accused person's word for all these allegations, and found 'he seems to have acted under a *bond-fide* claim of right,' and discharged him." Judgment of High Court: "The Second-class Magistrate's judgment and order are wrong. Theft of joint property of a family may be committed by one of the family, though a co-parcener, if he takes it from joint possession into separate possession. See Weir's Criminal Rulings, p. 154, on s. 379, Penal Code. The acquittal is set aside, and the Magistrate is directed to re-try the case, and to have regard to the definition of theft in s. 378, Penal Code, and of the word dishonestly in s. 24."—Queen-Empress v. Ponnuranjan, I. L. R., 10 Mad. 186. [Kernan and Muttusámi Ayyár, JJ. Mar 1, 1887.]

A PERSON who has been convicted of the offence of theft (an offence punishable under ch. 17 of the Penal Code) does not, on being convicted of an attempt to commit the offence of theft, become liable to the enhanced punishment allowed by s. 75 of the Penal Code.—Queen-Empress v. Sriharan Bauri, I. L. R., 14 Cal. 357. [Petheram, C.J., and Cunningham, J. Mar. 19, 1887.]

**WHENEVER** any person causes a police-officer to arrest another person in a presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit. In such cases, if more persons than one are arrested or complained against, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit. All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term, not exceeding thirty days, as the Magistrate directs, unless such sum is sooner paid.—Crim. Pro. Code (Act X. of 1882), s. 552.

### 380. Whoever commits theft in any building, tent, or vessel, which

Theft in dwelling-house, building, tent, or vessel is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A PRISONER may be convicted of theft in a building and of house-breaking by night with intent to commit theft, though, if the Judge considers the punishment for the first offence sufficient, he need not award any additional sentence for the second.—Queen v. Tincowree, W. R. Sp. 31. [Jackson, J. May 11, 1864.]

**THEFT**, by constables, of property from the house they were employed to guard, is punishable under s. 380, and not s. 409.—Queen v. Boidonath Singh and others, 3 W. R. 29. [Jackson and Glover, JJ. June 17, 1865.]

THE prisoner was convicted by the Magistrate of two separate offences under ss. 456 and 380 of the Penal Code, and sentenced for both. On appeal, the Sessions Judge, holding that the offence proved was under s. 457, ordered a new trial for offences under ss. 457 and 380. Held that there ought not to be a new trial, but that the conviction and sentence under s. 380 should be set aside.—Queen v. Ramcharan Kairi, B. L. R. Sup. Vol. 488; 6 W. R. 39. [Peacock, C.J., and Norman, Kemp, Seton-Karr, and Campbell, JJ. July 9, 1866.]

A CATTLE-SHED has been held to be "a building used for the custody of property,"—Mad. H. C. R., Nov. 24, 1866.

Any Mag.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.



A HIRED boatman does not come within the definition of a clerk or servant under s. 381 of the Penal Code. Theft by such a person on board a boat comes under s. 380.—*Queen v. Bawool Manjee*, 8 W. R. 32. [Kemp and Glover, JJ. July 2, 1867.]

A DEPUTY Magistrate has no power to convict of theft (s. 380, Penal Code), where the offence charged is lurking house-trespass by night, with aggravating circumstances (ss. 458, 459, Penal Code), but must commit on the latter charge.—*Puran Tolee v. Bhut-too Dome*, 9 W. R. 5. [Kemp and Jackson, JJ. Jan. 13, 1869.]

WHERE the accused stole property at night belonging to two different persons from the same room of a house, it was held that he could not be sentenced separately as for two offences of theft.—*Queen v. Sheikh Moneeah*, 11 W. R. 38. [Loch and Jackson, JJ. April 14, 1869.]

A PRISONER convicted of "theft in a dwelling-house," who has previously been convicted of "simple theft," is not thereby rendered liable to whipping under Act VI. of 1864, s. 3.—*Reg. v. Chángiá valad Shumiá*, 7 Bom. H. C. R. 68. [Westropp, C.J., and Gibbs and Lloyd, JJ. Sep. 22, 1870.]

THE Magistrate convicted the accused under s. 380 of the Penal Code, and a previous conviction having been proved under s. 379 of the Penal Code, sentence of imprisonment and whipping was passed. Held that, in order to justify the sentence of whipping, the previous conviction should have been in respect of the same specific offence.—*Pro.*, Oct. 28, 1870, 5 Mad. H. C. R. Ap. 38.

ON a conviction for theft in a dwelling under s. 380 of the Penal Code, fine cannot be substituted in lieu of imprisonment, though it may be added to imprisonment.—*Sheikh Dulloo v. Zainah Bebee and others*, 16 W. R. 17. [Kemp and Glover, JJ. July 1, 1871.]

ALL that is necessary in order to constitute the offence of theft in a building is that the property should be under the protection of the building. It is not necessary to show unlawful entrance into the building.—*Queen v. Ishree Pershad*, 24 W. R. 49. [Markby and McDonell, JJ. Aug. 23, 1875.]

S. 380, which makes it an offence punishable with seven years' imprisonment to commit theft in any building, &c., used as a human dwelling or for the custody of property, is intended to give greater security only to property deposited in a house, so as to be under the protection of the house, and not to property about the person of the party from whom it is stolen. Theft from the person in a dwelling-house is, therefore, simple theft under s. 379.—*Tandri Ram v. Crown*, Panj. Rec., No. 14 of 1876.

ACCUSED, with intent to commit theft, entered at night a *dalan*, or entrance-hall, surrounded by a wall in which there were two door-ways, but without doors, which was used for the custody of property. Held that the *dalan* was a building within the meaning of ss. 380 and 442, and that a conviction under s. 457 was therefore maintainable.—*Dad v. Crown*, Panj. Rec., No. 10 of 1879.

HELD that, where, in the course of one and the same transaction, an accused person appears to have committed several acts, directed to one end and object, which together amount to a more serious offence than each of them taken individually by itself would constitute, although for purposes of trial it may be convenient to vary the form of charge, and to designate not only the principal, but the subsidiary crimes alleged to have been committed, yet in the interests of simplicity and convenience it is best to concentrate the conviction and sentence on the gravest offence proved. Where, therefore, a person who broke into a house by night, and committed theft therein, was charged and tried for offences under ss. 380 and 457 of the Penal Code, and was convicted of both those offences, and punished for each with rigorous imprisonment for eighteen months, the Court convicted him of the offence under s. 457, and sentenced him to rigorous imprisonment for three years, and acquitted him of the offence under s. 380.—*Empress v. Ajudhia*, I. L. R., 2 All. 644. [Straight, J. Jan. 19, 1880.]

THE accused was convicted at one trial by a Magistrate of the First Class of the offences of house-breaking by night with intent to commit theft, punishable under s. 457, and of theft in a dwelling-house, punishable under s. 380 of the Penal Code (Act XLV. of 1860), the two offences being part of the same transaction, the theft following the house-breaking. The prisoner was sentenced to two years' rigorous imprisonment under s. 457, and to six months' rigorous imprisonment and a fine of Rs. 100, or, in default of payment,

three months' further rigorous imprisonment, under s. 380. The District Magistrate referred the case to the High Court, on the ground that the aggregate of punishment awarded on the two heads of charge exceeded the powers of the First-class Magistrate who tried the case. The Sessions Judge, to whom an appeal had been preferred, was of the same opinion, and reduced the sentence to two years' rigorous imprisonment. *Held* that as the accused committed two distinct offences which did not "constitute, when combined, a different offence" punishable under any section of the Penal Code (Act XLV. of 1860), s. 71 of the Code did not apply, and as the aggregate punishment did not exceed twice the amount of punishment which the trying Magistrate was competent to inflict, the sentences were legal under s. 35 of the Criminal Procedure Code (Act X. of 1882). *Per* Jardine, J.—The rules for assessment of punishment, contained in s. 454 of the Criminal Procedure Code of 1872, having been omitted in s. 235 of the Criminal Procedure Code of 1882, must now be sought for in s. 71 of the Penal Code (Act XLV. of 1860) and in s. 35 of the Criminal Procedure Code (Act X. of 1882).—*Queen-Empress v. Shakháram Bháu*, I. L. R., 10 Bom. 493. [Birdwood and Jardine, JJ. Feb. 1886.]

WHERE the accused stole a piece of cloth spread out to dry on the top of a house, to which he got across by scaling a wall, it was held that he had not committed theft in a building, but simple theft. The fact that the roof was used for domestic purposes makes no difference.—1 Mad. Jur. 282.

Ct. of Ses.  
Presy. Mag.,  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**381.** Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of property in possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A HIRED boatman does not come within the definition of a clerk or servant under s. 381 of the Penal Code. Theft by such a person on board a boat comes under s. 380.—*Queen v. Bawool Manjee*, 8 W. R. 32. [Kemp and Glover, JJ. June 2, 1867.]

THE prisoners were charged with having stolen a sum of money shut up in a box, and placed in the police treasury-buildings, over which they, as barkandázes, were placed in guard. *Held* that the charge should have been made under s. 381 (theft by a servant in possession of property), and not under s. 409 (criminal breach of trust by a public servant).—*Queen v. Juggurnath Singh and others*, 2 W. R. 55. [Seton-Karr, Jackson, and Glover, JJ. April 3, 1877.]

THE civil station at Rájkot is not part of British India within the meaning of Stat. 21 and 22 Vic., c. 106. Where the accused, a subject of a Native State, committed theft at Rájkot Civil Station, and was found in possession of the stolen property at Thána, *held* that as the offence was not committed in British India, and as the accused was the subject of a Native State, the Sessions Court at Thána had no jurisdiction to try the accused for theft, under s. 381 of the Penal Code. But it was competent to try him for dishonest retention of stolen property under s. 410 of the Penal Code as amended by Act VIII. of 1882.—*Queen-Empress v. Abdul Latib valad Abdul Rakiman*, I. L. R., 10 Bom. 186. [Birdwood and Jardine, JJ. Nov. 24, 1885.]

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**382.** Whoever commits theft, having made preparation for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

#### Illustrations.

(a.) A commits theft on property in Z's possession; and, while committing this theft, he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z, in case Z should resist. A has committed the offence defined in this section.

(b.) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing, and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 382 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

AN omission to give information that a crime has been committed does not, under s. 107 of the Penal Code, amount to abetment, unless such omission involves a breach of a legal obligation. A private individual is not bound by any law to give information of any offence which he has seen committed.—Queen v. Khadim Sheikh, 4 B. L. R. A. Cr. 7. [Loch and Glover, J.J. Nov. 23, 1869.]

S A, a resident of foreign territory, was found concealed with three companions (who were Jowaki Afridis), all armed to the teeth, in a deserted house in Surgul, Kohat district. Some Government camels were grazing in the village, and the theory for the prosecution was that S A and the other accused came down to steal these camels, or such other property as they might be able to lay hand upon. The Deputy Commissioner convicted all the accused under ss. 109 and 382, and the Commissioner, to whom the proceedings went up for confirmation, altered the conviction to one under s. 393. Held (by a majority of the Court, Elsmie, J., dissenting) that the conviction could not be sustained. Per Smyth, J.—The mere assembling of a number of persons together with a general intention of committing theft, and not for the purpose of committing a specific theft or theft of specific property, cannot be considered to amount to the abetment of an offence of theft, so as to be punishable under ss. 116 and 379, or, as in the present case, under ss. 116 and 382. There must be some design to commit a specific offence before a person can be held guilty of abetment of such offence by having conspired with others to commit it. Per Elsmie, J., *contra*—That the case clearly came within the meaning of the 2nd clause of s. 107, and that the conviction was sustainable. Per Plowden, J.—On a charge of abetment of conspiracy, it is necessary to prove, and it ought therefore to be alleged, not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence (specify the offence), but also that some act or illegal omission (specify the particular act or omission) took place in pursuance of that conspiracy, and in order to the commission of the said offence. That in this case the facts alleged were not proved with sufficient certainty to justify a conviction, as it could not be said positively that the purpose of the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there. Held further (per Plowden, J.)—That a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft), as opportunity should offer, within a determinate area (as, for instance, a village), would not be bad as being too vague.—Sher Ali v. Empress, Panj. Rec., No. 18, of 1879.

#### CHARGE.

That you, on or about the      day of      , at      , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under s. 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

That you, on or about the      day of      , at      , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under s. 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

That you, on or about the      day of      , at      , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under s. 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].—Crim. Pro. Code (Act X. of 1882), Sch. XXVIII. (II.).

## OF EXTORTION.

**383.** Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed, which may be converted into a valuable security, commits "extortion."

*Illustrations.*

(a.) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(b.) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain moneys to A. Z signs and delivers the note. A has committed extortion.

(c.) A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(d.) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

THE making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, is extortion within the meaning of s. 384 of the Penal Code.—*Meer Abbas Ali v. Omed Ali*, 18 W. R. 17. [Kemp and Glover, JJ. June 17, 1872.]

**384.** Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

To amount to the offence of extortion, property must be obtained by intentionally putting a person in fear of injury, and thereby dishonestly inducing him to part with his property. The mere issue of kukam-nama (to collect statistical information) by a police-officer is no legal ground for a conviction of abetment of cheating or of extortion.—*Queen v. Meajan and another*, 4 W. R. 5. [Kemp and Seton-Karr, JJ. Sep. 9, 1865.]

A CHAUKEEDAR who obtains money from another person, either by fraudulent inducement or dishonesty, or by putting that person in fear of injury, is punishable under s. 417 of the Penal Code for cheating, or under ss. 383 and 384 for extortion, but not for criminal misappropriation of public money entrusted to him as a public servant.—*Queen v. Ramnarain Chaukeedar*, 3 W. R. 32. [Loch and Seton-Karr, JJ. Sep. 18, 1865.]

UNDER s. 384 delivery of the property by the person put in fear is the essence of the offence. Where there is no delivery, but the person intimidated passively allows his property to be taken away, the offence is not extortion, but would be robbery, if the threats used came within the meaning of s. 390.—*Queen v. Duleelooddeen Sheikh and another*, 5 W. R. 19; 1 Wyman's Rev., Civ., and Crim. Rep., 20. [Macpherson, J. Jan. 30, 1866.]

WHERE a constable and others enter a house, and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others.—*Government v. Mahomed Hossein and others*, 5 W. R. 49. [Norman and Campbell, JJ. Mar. 5, 1866.]

It is not necessary, in a case of extortion under the Penal Code, that the threat should be used, and the property received, by one and the same individual, nor that the receiver should be charged with abetment, although that might be done.—*Reg. v. Shankar Bhagvat*, 2 Bom. H. C. R. 394. [Couch, C.J., and Warden, J. July 12, 1866.]

A CONVICTION of extortion by a Full-power Magistrate, and an order of a Sessions Judge rejecting an appeal therein, reversed by the High Court, as there was no such fear of injury as is contemplated by s. 383 of the Penal Code, nor was the delivery of money

by the complainants *thereby induced*, nor did it appear from the evidence that the money was obtained *dishonestly* by the prisoner, who might have demanded it, believing in good faith that he was entitled to it.—*Reg. v. Abdul Kádir valad Bálá Abuje*, 3 Bom. H. C. R. 45. [Couch, C.J., and Warden, J. Oct. 31, 1866.]

WHERE accused extorted money by threatening to bring a criminal charge, it was held that he had committed extortion, whether the charge which he threatened to bring was true or false. The terror of a criminal charge is a fear of injury within the meaning of those words in s. 383 of the Penal Code. Extortion may be equally committed whether the charge threatened is true or false.—*Queen v. Mobarruk and others*, 7 W. R. 28; 3 Wyman's Rev., Civ., and Crim. Reporter, 19. [Norman and Seton-Karr, JJ. Feb. 4, 1867.]

WHERE a complainant charged a person, who was one of the public servants mentioned in s. 167 of Act XXV. of 1861 (corresponding with s. 197 of Act X. of 1882), with committing acts which, if committed by a private individual, would have constituted the offence of extortion, it was held that it was not illegal to treat the charge as one of extortion, and to proceed to trial without sanction for the prosecution.—*Reg. v. Parshram Keshav*, 7 Bom. H. C. R. 61. [Gibbs and Melvill, JJ. July 28, 1870.]

THE making use of real or supposed influence to obtain money from a person against his will under threat, in case of refusal, of loss of appointment, is extortion within the meaning of s. 384 of the Penal Code.—*Meer Abbas Ali v. Omed Ali*, 18 W. R. 17. [Kemp and Glover, JJ. June 17, 1872.]

THE mere fact that the offence of extortion under s. 384 of the Penal Code is committed in the presence of the village-chaukidar, without eliciting any disapproval on his part, will not render him liable as an abettor of the offence.—In the Matter of the Petition of Gopal Chunder Sirdar; *Gopal Chunder Sirdar v. Foolmoni Bewa*, I. L. R., 8 Cal. 728; 11 C. L. R. 223. [McDonell and Field, JJ. April 20, 1882.]

THE mere going about and collecting money, upon an assertion that an order had issued to tax the persons upon whom the demand was made, is not extortion, but cheating.—5 Rev., Jud., and Pol. Jour., 147.

**385.** Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

**386.** Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

**387.** Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

THE feigning of an attempt to commit suicide in order to extort money is an offence under s. 387 of the Penal Code.—*Reg. v. Guzory*, 1 Ind. Jur. N. S. 423. [Peacock, C.J., and Phear and Maupherson, JJ. Sep. 8, 1866.]

**388.** Whoever commits extortion by putting any person in fear of an accusation against that person or any other, of having committed or attempted to commit any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person

Ditto.

to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be one punishable under section 377 of this Code, may be punished with transportation for life.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

THE terror of a criminal charge is a fear of injury within the meaning of those words in s. 383 of the Penal Code. Extortion under ss. 388 and 389 may be equally committed, whether the charge threatened be true or false.—*Queen v. Mobarruk and others*, 7 W. R. 28. [Norman and Seton-Karr, JJ. Feb. 4, 1867.]

Ck. of Ses.  
Uncog.  
Warrant.  
Not bailable.  
Not comp.

**389.** Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation against that person or any other, of having committed, or attempted to commit, an offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with transportation for life.

In this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

THE terror of a criminal charge is a fear of injury within the meaning of those words in s. 383 of the Penal Code. Extortion under ss. 388 and 389 may be equally committed whether the charge threatened be true or false.—*Queen v. Mobarruk and others*, 7 W. R. 28. [Norman and Seton-Karr, JJ. Feb. 4, 1867.]

## OF ROBBERY AND DACOITY.

**390.** In all robbery there is either theft or extortion.

Theft is "robbery," if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death, or hurt, or wrongful restraint, or fear of instant death, or of instant hurt, or of instant wrongful restraint.

Extortion is "robbery," if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person, or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

*Explanation.*—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

### Illustrations.

(a.) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(b.) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(c.) A meets Z and Z's child on the high road. A takes the child, and threatens to sling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child who is there present. A has therefore committed robbery on Z.

(d.) A obtains property from Z by saying: "Your child is in the hand of my gang, and will be put to death unless you send us ten thousand rupees." This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

**391.** When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding, is said to commit "dacoity."

THE definition of dacoity in the Penal Code is so wide as to extend to what would have been treated as cases of plunder under the old law.—*Queen v. Khoyrat Ally Beg and others*, 3 W. R. 60. [Kemp and Seton-Karr, JJ. Aug. 8, 1865.]

**392.** Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Cognizable. Warrant. Not bailable. Not comp.

**CHARGE.**—That you, on or about the day of , at , robbed [state the name], and thereby committed an offence punishable under s. 392 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (II.).

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 392 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

A PERSON convicted of robbery or theft cannot be also convicted of dishonestly receiving in respect of the same property.—*Queen v. Sheikh Muddun Ally and another*, 1 W. R. 27. [Kemp and Glover, JJ. Nov. 23, 1864.]

WHEN stolen property is found in the possession of dacoits, the offence of "knowingly having in possession" is to be considered as included in the original one of dacoity, unless there are circumstances clearly separating the one crime from the other, e.g., length of time or distance.—*Queen v. Abdool Hossein and others*, 1 W. R. 48. [Kemp and Glover, JJ. Dec. 22, 1864.]

IN a trial for robbery, it is competent to the jury, if they disbelieve the evidence as to the assault (i.e., as to the circumstances of aggravation), to bring in a verdict of guilty of theft.—*Queen v. Sakhaut Sheikh*, 2 W. R. 13. [Kemp and Glover, JJ. Jan. 23, 1865.]

THEFT with violence is robbery. A conviction under s. 397 of the Penal Code of using a deadly weapon whilst engaged in the commission of robbery or dacoity is equally good whether the number of thieves be five or under.—*Queen v. Dwarka Aheer*, 2 W. R. 49. [Glover, J. Mar. 21, 1865.]

WHEN persons are found within six hours of the commission of a dacoity with portions of the plundered property in their possession, the presumption of law is that they are participators in the dacoity, and not merely receivers.—*Queen v. Cassy Mul and another*, 3 W. R. 10. [Glover, J. May 6, 1865.]

WHERE a person, through fear, &c., offers no resistance to the carrying off of his property, but does not deliver any of the property to those who carry it off, the offence committed is robbery, and not extortion.—Queen v. Dulcelooddeen Sheikh and another, 5 W. R. 19. [Macpherson, J. Jan. 30, 1866.]

THE offence is robbery where, in committing theft, there is indubitably an intention, seconded by an attempt, to cause hurt.—Queen v. Teekai Bheer, 5 W. R. 95. [Jackson and Glover, JJ. May 28, 1866.]

A SENTENCE of fine only is illegal in a case of dacoity.—Queen v. Bhoja and others, 6 W. R. 54. [Norman and Seton-Karr, JJ. Aug. 13, 1866.]

WHERE persons are committed on three separate and distinct charges—for three separate and distinct robberies committed on the same night in three different houses, they must be tried separately on each of the three charges. Remarks on the irregularities in the investigation of the present case.—Queen v. Itwaree Dome and others, 6 W. R. 83. [Loch and Markby, JJ. Oct. 20, 1866.]

By the infliction of grievous hurt, theft becomes robbery, and all parties concerned in the offence are liable to punishment.—Queen v. Hushrut-Sheikh, 6 W. R. 85. [Loch, J. Nov. 27, 1866.]

**393.** Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 393 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

THE two offences of robbery and of voluntarily causing hurt, when combined, are punishable under s. 394 alone, and not under ss. 392 and 394.—Queen v. Mootkee Kora, 2 W. R. 1. [Kemp and Glover, JJ. Jan. 2, 1865.]

S A, a resident of foreign territory, was found concealed with three companions (who were Jowaki Afridis), all armed to the teeth, in a deserted house in Surgul, Kohat district. Some Government camels were grazing in the village, and the theory for the prosecution was that S A and the other accused came down to steal these camels, or such other property as they might be able to lay hand upon. The Deputy Commissioner convicted all the accused under ss. 109 and 382, and the Commissioner, to whom the proceedings went up for confirmation, altered the conviction to one under s. 393. *Held* (by a majority of the Court, Elsmie, J., dissenting) that the conviction could not be sustained. *Per* Smyth, J.—The mere assembling of a number of persons together with a general intention of committing theft, and not for the purpose of committing a specific theft or theft of specific property, cannot be considered to amount to the abetment of an offence of theft, so as to be punishable under ss. 116 and 379, or, as in the present case, under ss. 116 and 382. There must be some design to commit a specific offence before a person can be held guilty of abetment of such offence by having conspired with others to commit it. *Per* Elsmie, J., *contra*.—That the case clearly came within the meaning of the 2nd clause of s. 107, and that the conviction was sustainable. *Per* Plowden, J.—On a charge of abetment of conspiracy, it is necessary to prove, and it ought therefore to be alleged, not only that the person charged engaged with one or more other person or persons in a conspiracy for the commission of an offence (specify the offence), but also that some act or illegal omission (specify the particular act or omission) took place in pursuance of that conspiracy, and in order to the commission of the said offence. That in this case the facts alleged were not proved with sufficient certainty to justify a conviction, as it could not be said positively that the purpose of the accused was theft, or that they came into British territory in pursuance of a conspiracy to commit theft there. *Held* further (*per* Plowden, J.).—That a charge against several persons of engaging in a conspiracy to commit an offence of a particular kind (as, for instance, theft), as opportunity should offer, within a determinate area (as, for instance, a village), would not be bad as being too vague.—*Sher Ali v. Empress*, Panj. Rec., No. 18 of 1879.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.



**394.** If any person, in committing or in attempting to commit robbery, voluntarily causing hurt in committing robbery. voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 394 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

THE two offences of robbery and of voluntarily causing hurt, when combined, are punishable under s. 394 alone, and not under ss. 392 and 394.—Queen v. Mootkee Kora, 2 W. R. 1. [Kemp and Glover, JJ. Jan. 2, 1865.]

WHERE, in a case of robbery attended with death, there was no intention of causing death, or such bodily injury as was likely to cause death, the conviction was altered from voluntarily causing hurt in committing robbery to voluntarily causing grievous hurt in committing robbery.—Queen v. Chakor Hareo and others, 6 W. R. 16. [Kemp and Seton-Karr, JJ. June 30, 1866.]

**395.** Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

CHARGE.—That you, on or about the day of at committed dacoity, an offence punishable under s. 395 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].—Crim. Pro. Code (Act X. of 1882), Sch. V., Form XXVIII. (II.).

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 395 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

A PERSON convicted of and sentenced for dacoity cannot also be convicted of and sentenced for receiving or retaining the stolen property thereby acquired (*dissentiente Looch, J.*).—Bhyrubi Seal and another, Appellants, W. R. Sp. 27. [Loch, Steer, and Glover, JJ. May 2, 1864.]

IF a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 306 of the Penal Code; but he cannot be separately convicted of murder under s. 302, and of committing dacoity under s. 395.—Queen v. Rughoo and others, W. R. Sp. 30. [Loch and Jackson, JJ. May 3, 1864.]

FIVE men armed were discovered committing an act of house-breaking by night. One of the parties was engaged in cutting a hole through the wall while the others stood on guard. When the alarm was given, the neighbours ran up, and one of the robbers cut down one of the villagers. The robbers effected their escape, not however before two of them were identified, the prisoners in the case. *Held* that the crime of which the prisoners were guilty was house-breaking by night, and not dacoity.—Queen v. Rewut Rajwar and another, W. R. Sp. 39. [Loch, Seton-Karr, and Jackson, JJ. July 19, 1864.]

WHEN stolen property is found in the possession of dacoits, the offence of "knowingly having in possession" is to be considered as included in the original one of dacoity, unless there are circumstances clearly separating the one crime from the other, e.g., length of time or distance.—Queen v. Abdool Hossain and others, 1 W. R. 48. [Kemp and Glover, JJ. Dec. 22, 1864.]

THE Sessions Judge should record under what section, or on what grounds, he orders a portion of the fines inflicted on prisoners convicted of dacoity to be made over to the complainant.—Queen v. Bissonath Mundle and others, 2 W. R. 58. [Jackson, J. [April 10, 1865.]

WHEN persons are found within six hours of the commission of a dacoity with portions of the plundered property in their possession, the presumption of the law is that they are participators in the dacoity, and not merely receivers.—Queen v. Cassy Mul, 3 W. R. 10. [Glover, J. Máy 6, 1865.]

KNOWING of a design to commit a dacoity, and voluntarily concealing the existence of that design with the knowledge that such concealment would facilitate the commission of dacoity, does not amount to an abetment of the dacoity.—Queen v. Jhugroo and others, 4 W. R. 2. [Seton-Karr and Jackson, JJ. Sep. 4, 1865.]

WHEN a prisoner is apprehended eight days after the commission of a dacoity with part of the plunder in his possession, there is as good ground for charging him with the dacoity as with having received or retained with guilty knowledge, and he ought to be charged in the alternative form.—Queen v. Motee Jolaha, 5 W. R. 66. [Jackson, J. April, 9, 1866.]

SEVERE sentence of transportation for life in a case of aggravated dacoity, confirmed as required by the state of the district.—Queen v. Khooda Southal and others, 6 W. R. 9. [Seton-Karr, J. June 21, 1866.]

A SENTENCE of fine only is illegal in a case of dacoity.—Queen v. Bhoja and others 6 W. R. 54. [Norman and Seton-Karr, JJ. Aug. 13, 1866.]

IN a case of dacoity, a sentence of 14 years' transportation was held illegal, and reduced to 10 years' transportation under s. 395 of the Penal Code.—Queen v. Ram Chand Punjab, 6 W. R. 88. [Kemp and Seton-Karr, JJ. Dec. 3, 1866.]

ON an application to the High Court, as a Court of Revision, to discharge an order made by a Sessions Judge, under s. 435, Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 436, new Code of Criminal Procedure (Act X. of 1882), for the committal of certain accused persons for trial on a charge of dacoity, *held* that, as all that was done was done under a claim of right in good faith entertained by the accused, however erroneously, the charge could not be sustained. The order of the Sessions Judge annulled.—*Ex-parte*, Karaka Náchiar, 3 Mad. H. C. R. 254. [Collett and Ellis, JJ. Dec. 17, 1866.]

WHEN a body of men attack and plunder a house, the mere fact of the proprietor's family having been able to make their escape a few minutes before the robbers forced an entrance does not take that offence out of the purview of s. 395 of the Penal Code. It is sufficient for the application of the section that the robbers cause, or attempt to cause, the fear of instant hurt or of instant wrongful restraint.—Queen v. Kissoree Pater and others, 7 W. R. 35. [Glover, J. Feb. 19, 1867.]

S. 511 of the Penal Code does not apply to a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under s. 397, and a sentence of three years' rigorous imprisonment was passed on him, the finding was amended by striking out "ss. 397 and 511," and substituting "s. 395."—Queen v. Koonce, 7 W. R. 48. [Jackson and Glover, JJ. Mar. 25, 1867.]

THE evidence of an approver, for whose appearance at the trial there was not the slightest reason, and the mere fact that in the houses of each of the four prisoners only one article of the stolen property was found, was held insufficient, under the circumstances of this case, where the best witnesses were not examined to support a conviction of the prisoners on a charge of dacoity.—Queen v. Ram Sagar and others, 8 W. R. 57. [Loch and Seton-Karr, JJ. Aug. 5, 1867.]

A SENTENCE of 14 years' imprisonment cannot be passed for dacoity under s. 395 of the Penal Code.—Queen v. Haroo Rujwar and others, 13 W. R. 27. [Bayley and Glover, JJ. Feb. 14, 1870.]

THE practice of dividing the facts which constitute the parts of one offence into several minor offences condemned. A person convicted of dacoity under s. 395, Penal Code, cannot be convicted also of dishonestly receiving stolen property under s. 411, or of receiving stolen property transferred by commission of dacoity under s. 412, when there is no evidence of the commission. Mode of treating the confession of prisoners as evidence in a case of receiving stolen property pointed out.—Queen v. Shahabut Sheikh and others, 13 W. R. 42. [Norman, Offg. C.J., and Bayley, J. Mar. 8, 1870.]

MERELY being seen getting on board a boat with four persons who have on their own admissions been convicted of belonging to a gang of dacoits, is not sufficient evidence against those so seen. To make an admission of guilty knowledge of the means by which

money supposed to have been acquired by dacoity was obtained, evidence under s. 150 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 26 of the Evidence Act (I. of 1872), it must be shown that the admission was antecedent to the discovery of the money.—*Queen v. Kamal Fukeer and others*, 17 W. R. 50. [Couch, C.J., and Ainslie, J. April 15, 1872.]

IN this case the charge was originally one of dacoity under s. 395, Penal Code, and the proceedings were first conducted under ch. 18 of the Code of Criminal Procedure (Act X. of 1872), corresponding with ch. 22 of the new Code of Criminal Procedure (Act X. of 1882), but during the progress of the case the charge under s. 395 was lost sight of, and the accused were put on their defence on a charge of being members of an unlawful assembly under s. 143, Penal Code, and the proceedings were continued under ch. 17 of the Procedure Code (or ch. 21 of the new Procedure Code) in a summary way. *Held* that, had the complaint been one under s. 143, Penal Code, the Magistrate could, under s. 222, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 260, new Code of Criminal Procedure (Act X. of 1882), have tried it in a summary manner under ch. 17 (or ch. 21 of the new Code); but as the complaint was of a charge of dacoity under s. 395, the Magistrate had no jurisdiction to try the case in a summary manner, but should have inquired into it in a regular manner under ch. 18 (or ch. 22 of the new Code).—*Dwarkanath Mozoondar v. Nalu Dass*, 21 W. R. 89. [Kemp and Birch, JJ. April 20, 1874.]

A AND B were committed for trial; the former for dacoity under s. 395 of the Penal Code, and the latter under s. 412 for receiving stolen property, knowing it to be such. A made two confessions, and in both he stated he had handed over to B some pieces of gold and silver stolen at the dacoity. When B was arrested, a gold ring and a silver wristlet were found in his possession. At the trial, A pleaded guilty, and B claimed to be tried. A goldsmith deposed that he had made the ring and wristlet found with B out of pieces of gold and silver given to him for the purpose by B. On this evidence and on the confessions made by A the Sessions Judge convicted B. On appeal to the High Court, *held* that A and B not having been tried jointly for the same offence, the confession of A was inadmissible as evidence against B. There was, therefore, no evidence of the identity of the goods stolen at the dacoity with those found in B's possession, and the case against him failed. Conviction quashed.—*Empress v. Balu Patel*, 1 L. R., 5 Bom. 63. [Westropp, C.J., and Melville, J. April, 7, 1880.]

**396.** If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 396 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

IF the act by which death is caused does not in itself constitute the crime of murder, it does not constitute murder because it is coupled with dacoity.—*Queen v. Ramohunder Chung*, Ind. Jur. O. S. 103. [Steer, Seton-Karr, and Jackson, JJ. Nov. 17, 1862.]

IF a person concerned in a dacoity unintentionally commits murder, he is liable, to punishment under s. 396 of the Penal Code, but he cannot be separately convicted of murder under s. 302, and of committing dacoity under s. 395.—*Queen v. Rughoo*, W. R. Sp. 30. [Loch and Jackson, JJ. May 3, 1864.]

THE case of a prisoner who, after having committed dacoity attended with murder, absconded to Bhootan. On the annexation of the Bhootan Doors by the British Government, he was arrested, and, after conviction, was sentenced to transportation for life.—*Queen v. Roopa*, 2 W. R. 49. [Glover, J. Mar. 21, 1865.]

**397.** If, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Ditto.

Robbery or dacoity, with attempt to cause death or grievous hurt.

uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 397 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

THEFT with violence is robbery. A conviction under s. 397 of the Penal Code is equally good, whether the number of thieves be five or under.—Queen v. Dwarka Aheer, 2 W. R. 49. [Glover, J. Mar. 21, 1865.]

S. 511 of the Penal Code does not apply to a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under s. 397, and a sentence of three years' rigorous imprisonment was passed on him, the finding was amended by striking out "ss. 397 and 511," and substituting "s. 395."—Queen v. Koonce, 7 W. R. 48. [Jackson and Glover, JJ. Mar. 25, 1867.]

UNDER s. 397, it is only the offender actually causing grievous hurt who is liable to the enhanced punishment.—Mad. H. C. Rul., Mar. 18, 1868.

**398.** If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Ct. of Ses.  
Cognizable.  
Warrant  
Not bailable.  
Not comp.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 398 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

**399.** Whoever makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Making preparation to commit dacoity.

Ditto.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 399 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

UNDER the Penal Code, preparation to commit an offence is punishable only when the preparation was to commit dacoity. Preparation to commit any other offence, such as house-breaking or robbery, is not an offence.—Reg. v. Shera, 3 Panj. Rec. 43.

**400.** Whoever, at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Ditto.

MERELY being seen getting on board a boat with four persons who have on their own admissions been convicted of belonging to a gang of dacoits, is not sufficient evidence against those so seen. To make an admission of guilty knowledge of the means by which money supposed to have been acquired by dacoity was obtained, evidence under s. 26 of Act I. of 1872, it must be shewn that the admission was antecedent to the discovery of the money.—Queen v. Kamal Fukeer and others, 17 W. R. 50. [Couch, C.J., and Ainslie, J. April 15, 1872.]

IT is necessary, in order to establish a charge under s. 400, Penal Code, that the prosecution should make out that there existed at the time specified a gang of persons associated together for the purpose of habitually committing dacoity, and that the accused was one of the gang.—Queen v. Mooktaram Sirdar, 23 W. R. 18. [Phear and Ainslie, JJ. Jan. 13, 1875.]

**401.** Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

It is an offence under s. 401 to belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery; but it is not sufficient, to support a conviction under that section, that the accused should be proved to be simply a member of a robber-tribe; it should also be shewn that he actually consorted with persons who were themselves associated for the purpose of habitually committing theft or robbery.—*Peera v. Crown*, Panj. Rec., No. 37 of 1869.

In the trial of prisoners for the offence of belonging to a gang of persons associated for the purpose of habitually committing theft or robbery (s. 401, Penal Code), the Judge should, in his charge, put clearly to the jury (1) the necessity of proof of association; (2) the need of proving that that association was for the purpose of habitual theft, and that the habit is to be proved by an aggregate of acts.—*In re Shriram Venkatasami*, 6 Mad. L. C. R. 120. [Holloway and Kindersley, JJ. Feb. 21, 1871.]

To sustain a conviction on a charge under s. 401 there must be (1st) proof of association, and (2nd) proof that the association was for the purpose of habitual theft, and that habit should be proved by an aggregate of acts. Where, therefore, the accused were arrested together in one village, and there was no doubt that each of the accused had individually committed theft or robbery, but it was not shown that there had been any association among the accused for the purpose of committing theft or robbery, much less for the purpose of habitually committing such offences, held that the conviction under s. 401 was not sustainable.—*Afridi v. Empress*, Panj. Rec., No. 9 of 1880.

**402.** Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Ditto.

Every person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 402 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

CASE of an unlawful assembly, the members of which were held guilty of an offence under s. 402 of the Penal Code on their own admission that they not only knew that the assembly was an assembly for the purpose of committing dacoity, but also that all the persons (including themselves) constituting the assembly lived on the proceeds of dacoity, and had no other means of living.—*Queen v. Kendra Kumar and others*, 7 W. R. 61. [Hobhouse, J. April 30 1867.]

## OF CRIMINAL MISAPPROPRIATION OF PROPERTY.

**403.** Whoever dishonestly misappropriates or converts to his own use any moveable property shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both

Any Mag.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

### Illustrations.

(a.) A takes property belonging to Z out of Z's possession, in good faith believing, at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(b.) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(c.) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse, and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

A PERSON was convicted and sentenced under s. 411 of the Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had been set at large by some Hindu, in accordance with Hindu religious usage, at the time of performing funeral ceremonies. *Held* that the bull was not, at the time of the alleged misappropriation, "property" within the meaning of the Penal Code, inasmuch as not only was it not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor; that it was therefore "*nullius in rem*," and incapable of larceny being committed in respect of it; and that the conviction must be set aside.—*Queen-Empress v. Bandhu*, I. L. R., 8 All. 51. [Straight, J. Dec. 7, 1885.]

*Explanation 1.*—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

#### *Illustration.*

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

*Explanation 2.*—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined if he appropriates it to his own use, when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time, in such a case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

#### *Illustrations.*

(a.) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(b.) A finds a letter on the road, containing a bank-note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(c.) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(d.) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(e.) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(f.) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

THE mere fact that the prosecution gave the prisoner time to make out his accounts, and pay the balance due, does not vitiate a conviction for dishonest misappropriation, or show that the matter is one for the Civil Courts only.—*In re Sreekant Biswas*, 5 W. R. 56. [Macpherson, J. Mar. 24, 1866.]

To bring a prisoner within s. 403 of the Penal Code, there must be actual conversion of the thing appropriated to the prisoner's own use. Where, therefore, the accused found a thing, and merely retained it in his possession, he was acquitted of criminal misappropriation under the section referred to.—*Queen v. Abdool*, 10 W. R. 23. [Loch and Glover, JJ. July 27, 1868.]

A SERVANT, who retains in his hands money which he was authorized to collect, and which he did collect, from the debtor of his master, because money is due to him as wages, is guilty of criminal misappropriation.—*Queen v. Bissessur Roy*, 11 W. R. 51. [Jackson and Markby, JJ. May 13, 1869.]

IN a case in which the accused is charged with having dishonestly appropriated property under s. 403 of the Penal Code, the charge should specify the person to whom the property belonged. Where the accused is interested in the property jointly with others, he is not necessarily guilty of a criminal act if he takes possession of it, and disposes of it.—*Queen v. Parbutty Churn Chuckerbutty*, 14 W. R. 13. [Phear and Mitter, JJ. July 2, 1870.]

WHERE money is paid to a person by mistake, and such person, either at the time of the receipt of the money, or at any time subsequently before its refund, discovers the mistake, and determines to appropriate the money, he is guilty of criminal misappropriation, but he is not guilty of cheating.—*Queen v. Shamsundur*, 2 N. W. P. 475. [Turner, J. Dec. 17, 1870.]

IF it be the duty of the agent of a landholder to keep the collections he makes for his master separate from his own moneys, expending thereout moneys on his master's behalf, and handing over the balance to his master, and if he, in breach of his trust, converts the money to his own use, he is amenable to a criminal prosecution. And where a landowner permits the agent to mix the collections with his own moneys, if the agent applies the moneys so collected to his own use fraudulently and dishonestly, and falsifies the account so as to conceal his fraud, there is evidence of a criminal misappropriation.—*Queen v. Kareem Bux*, 3 N. W. P. 30. [Turner, J. Feb. 7, 1871.]

THIS was considered to be a matter of trade between the prosecutrix and the prisoner, who took certain hides from the former, but refused to pay for them, and was held not guilty of dishonest misappropriation under s. 403 of the Penal Code.—*Queen v. Boystum Moochee*, Petitioner, 17 W. R. 11. [Kemp and Jackson, JJ. Feb. 3, 1872.]

A, THE male managing member of a joint Hindu family, removed an iron-safe, the property of the joint estate, but containing properties which exclusively belonged to the other members of the family, from the possession of the latter, without their consent. Held that A, by removing the iron-safe, did not commit theft or any other offence, but he was guilty of criminal misappropriation if, on discovering the contents of the iron-safe to be properties belonging to others, he retained those properties, and attempted to appropriate them.—*Koomar Jogendro Nath Roy* and another, Appellants, 1 Shome's Rep. 31.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

**404.** Whoever dishonestly misappropriates or converts to his own use property, knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

*Illustration.*

Z dies in possession of furniture and money. His servant A, before the money comes into the possession of any person entitled to such possession, dishonestly misappropriates it. A has committed the offence defined in this section.

A PERSON may commit the offence of dishonest misappropriation of property possessed by a deceased person at the time of his death (s. 404 Penal Code) by dishonestly misappropriating the money entrusted to him, although he does not bring such money to his own use.—Enayet Hossein, Petitioner, 11 W. R. 1. [Jackson and Markby, JJ. Jan 12, 1869.]

S. 404 of the Penal Code (relating to the misappropriation or conversion of "property" left by a deceased person) does not apply to immoveable property.—Reg. v. Girdhar Dharamdás, 6 Bom. H. C. R. 33. [Tucker and Gibbs, JJ. Mar. 5, 1869.]

It is not necessary for a conviction for dishonest misappropriation of property possessed by a deceased person at the time of his death, under s. 404 of the Penal Code, that the accused should misappropriate to his own use. *Held*, by Markby, J., that under s. 404 all the elements are required to constitute the offence which would be required to constitute the offence of criminal misappropriation in respect of a person who is alive.—Queen v. Nobin Chunder Sircar, 12 W. R. 39. [Jackson and Markby, JJ. July 27, 1869.]

OF CRIMINAL BREACH OF TRUST.

**405.** Whoever, being in any manner entrusted with property or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust."

*Illustrations.*

(a.) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b.) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c.) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.



(d) But if A, in the last illustration, not dishonestly, but in good faith believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e.) A, a revenue-officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f.) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

**406.** Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Warrant  
Not bailable.  
Not comp.

**CHARGE.**—That you, on or about the \_\_\_\_\_, at \_\_\_\_\_, being entrusted with certain property, to-wit, \_\_\_\_\_, committed criminal breach of trust in respect of such property, and that you thereby committed an offence punishable under s. 406 of the Indian Penal Code, and within, &c.

To sustain a charge of criminal breach of trust, it is essential to establish the criminal character of the act by which the trust has been violated.—Govt. v. Doorga Pershad, 5 N. A., N. W. P., Part II., 40.

The acceptor of a bond covenanting to return a sum embezzled was held to be precluded from prosecuting the giver for criminal breach of trust.—Govt. v. Golam Hosseih, 5 N. A., N. W. P., Part II., 86.

IN cases which can lawfully be compounded, a composition entitling a party to bring a civil action thereupon amounts to a condonation of the criminal offence, and to an implied agreement not to prosecute. Where the terms of the composition are infringed, a civil suit would lie—not a criminal prosecution.—Govt. v. Sewaram and another, 5 N. A., N. W. P., Part II., 227, 1864.

A REFUSAL to give up land alleged to have been mortgaged, the mortgage being denied, cannot be treated as a dishonest misappropriation of the documents of title amounting to a criminal breach of trust under s. 405 of the Penal Code.—Reg. v. Jaffir Naik and another, 2 Bom. II. C. R. 127. [Couch and Newton, JJ. Dec. 7, 1864.]

IF a mortgagor in possession, who is entrusted with dominion over the mortgaged property by the mortgagee in whom the property is in a mortgage in the English form, wilfully defaults, and causes the property to be sold for arrears of Government revenue for the purpose of defrauding the mortgagee, and [purchases it benami, he is liable to be punished for criminal misappropriation under s. 405 of the Penal Code.—Ram Manick Shaha and others v. Brindabun Chunder Potdar and others, 5 W. R. 230 (Civ. Rul.). [Norman and Campbell, JJ. May 2, 1866.]

THE misappropriation of each separate item of money with which a person is entrusted is a separate offence, and the facts connected with it should form the subject of a separate inquiry. The duty of a committing officer in such a case is to select certain distinct items to frame his charges upon them, and to adduce evidence specially upon those items.—Chetter (C. A.), Appellant, 15 W. R. 5. [Jackson and Mookerjee, JJ. Jan. 21, 1871.]

A PERSON who pledges what is pledged to him may be guilty of criminal breach of trust. There are two elements: (1) the disposal in violation of any direction of law or contract, express or implied, prescribing the mode in which the trust ought to be discharged; (2) such disposal dishonestly.—Pro., May 23, 1871, 6 Mad. H. C. R. Ap. 28.

To constitute the offence of criminal breach of trust, there must be dishonest misappropriation by a person in whom confidence is placed as to the custody or management

of the property in respect of which the breach of trust is charged.—*Isser Chunder Ghose v. Peari Mohun Palit*, 16 W. R. 39. [Kemp and Glover, JJ. Aug. 5, 1871.]

WHERE a sub-inspector of police was charged with having purchased a pony which had been impounded, it was held that the Magistrate should have proceeded under s. 19, Act I. of 1871, taken with s. 169, Penal Code, and that the accused could not be convicted, under s. 406 of the Penal Code, of criminal breach of trust.—*Rajkristo Biswas*, Petitioner, 16 W. R. 52; 8 B. L. R. Ap. 1. [Kemp, Offg. C.J., and Ainslie, J. Sep. 25, 1871.]

A PARTNER who dishonestly misappropriates or converts to his own use, or dishonestly uses or disposes of any of the partnership-property which he is entrusted with, or has dominion over, is guilty of criminal misappropriation under s. 405 of the Penal Code.—*Nrigendro Lall Chatterjee v. Okhoy Coomar Shaw and others*, 21 W. R. 59; 13 B. L. R. 307. [Couch, C.J., and Jackson, Phear, Birch, and Morris, JJ. Mar. 30, 1874.] Overrules *Lall Chand Roy*, Revision of Proceedings in the Case of, 9 W. R. 37. Follows *Queen v. Gour Benode Dutt*, 21 W. R. 59, 13 B. L. R. 308n.

WHEN a master entrusts his servant with money for the payment of an open account, i.e., an account of which the items have never been checked or settled, and the tradesman makes the servant a present, and the transaction amounts to a taxation of the bill and a reduction of the price by the servant, the latter obtains the reduction for his master's benefit, the money in his hands always remains the master's property, and, if he appropriates it, he commits criminal breach of trust. But where the master himself has settled the account with the tradesman for a specific sum, and sends the servant with the money, and the servant, after making the payment, accepts a present from the tradesman, in that case the servant does not commit criminal breach of trust, inasmuch as the money is given to him by a person whom he believes to have a right to give it, though it may be that, according to the strict equitable doctrines of the Court of Chancery, he is bound to account to the master for the money. *Hay's Case* [*In re Canadian Oil Works Corporation* (L. R., 10 Ch. Ap. 393)] referred to. Where the Court of Session had tried, convicted, and sentenced an accused person under s. 409 of the Penal Code, and the High Court was of opinion that the conviction was not sustainable under that section, the Court refused to alter the finding, under s. 423 of the Criminal Procedure Code, to a conviction for some other offence for which the accused had not been charged or tried. Observations on the necessity of requiring corroboration, in material particulars, of the evidence of an accomplice. *Empress v. Ram Saran* (Weekly Notes, 1885, p. 311) referred to.—*Queen-Empress v. Imdad Khan*, 1 L. R., 8 All. 120. [Petheram, C.J. Dec. 21, 1885.]

Ct. of Ses.  
Presy. Mag.  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**407.** Whoever, being entrusted with property as a carrier, wharfinger, Criminal breach of trust by or warehouse-keeper, commits criminal breach of carrier, &c. trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A is charged under s. 407 of the Penal Code with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under s. 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under s. 406.—*Crim. Pro. Code* (Act X. of 1882), s. 238, ill a.

B, ENTRUSTED with rice at M (a port in British India) for conveyance to C (also a port in British India), took the rice to G, a port in foreign territory, and there sold it. He was convicted at M of criminal breach of trust as a carrier under s. 407 of the Penal Code. *Held* that the Sessions Court at M had no jurisdiction to try the offence under the Code of Criminal Procedure. *Held* also that no offence was committed on the high seas so as to give the Court jurisdiction under 12 and 13 Vic., c. 29, extended by 23 and 24 Vic., c. 88.—*Bápu Daldi v. Reg.*, 1 L. R., 5 Mad. 23. [Innes and Muttusámi Ayyár, JJ. Feb. 26, 1882.]

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**408.** Whoever, being a clerk or servant, or employed as a clerk or Criminal breach of trust by servant, and being in any manner entrusted in such a clerk or servant. capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall

be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**CHARGE.**—That you, on or about the \_\_\_\_\_, at \_\_\_\_\_, being a servant of \_\_\_\_\_; and being in such capacity entrusted with dominion over property, to wit, \_\_\_\_\_ worth Rs. \_\_\_\_\_, committed criminal breach of trust in respect of that property.—2 W. R. Cr. L. 15, No. 203 of 1865.

WHERE a Court Inspector improperly delegated to a constable the custody, &c., of Government money (taking from him private security to save himself from loss in case of defalcation), and the constable dishonestly converted the money to his own use, although he afterwards restored it, the case was held to fall under s. 408, and not s. 409, of the Penal Code, and the sentence reduced from 10 years' transportation, and a fine of Rs. 500, to one year's rigorous imprisonment, without fine.—*Queen v. Bane Madhub Ghose*, 8 W. R. 1. [Seton-Karr and Glover, JJ. June 1, 1867.]

A SERVANT who receives money for a specific purpose, and does not use it for that purpose, and, on being called on to account for the money, falsely says that he used it for that purpose, is guilty of criminal breach of trust under s. 408 of the Penal Code.—*Watson and Co. v. Golab Khan*, 10 W. R. 28; 1 B. L. R. S. N. 21. [Loch and Glover, JJ. Aug. 22, 1868.]

ACCUSED was employed by the Panjáb Bank as its treasurer at Multán. After serving for a few days in that capacity, he, with the consent of the Bank, put in one D as his agent or gomashita, himself removing to other employment at Amritsar, but continuing to receive pay from the Bank. D misappropriated certain moneys of the Bank, and finally absconded. The Sessions Court found that accused had received some of the misappropriated money from D, and had connived at D's defalcation; and convicted him of criminal breach of trust as a servant, and of abetting the same. In appeal it was contended for the accused, *inter alia*, that he was treasurer only in name, and had no dominion over the misappropriated property; consequently he was not a participator in reference to D's defalcation; and as to the latter, he was the servant of the accused, not of the Bank, so that, whatever his offence, he had not committed breach of trust as a servant. Found by the Chief Court, that both accused and D were servants of the Bank, that D had committed breach of trust as such, and that accused had received the misappropriated money from D with a guilty knowledge. On the question whether this amounted to abetment of D's offence, or to dishonest receiving under s. 411, it was held that, although no act done by accused after D's offence was committed would make the former guilty as an abettor, yet as accused, who was the Bank's treasurer, was bound to disclose the fact that he had irregularly received the Bank's money on the first defalcation, did not do so, he was guilty of an illegal omission, by which he voluntarily caused the safe abstraction and transmission to himself of the second sum, and had thereby abetted the breach of trust by a servant.—*Kaloo Ram v. Crown*, Panj. Rec., No. 30 of 1868.

**409.** Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant, or by banker, public servant, or in the way of his business as a merchant, or agent, banker, merchant, factor, broker, attorney, or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Uncoog.  
Warrant.  
Not bailable.  
Not comp.

THE offence of a person who makes away with property which has been placed in his charge and possession is not theft, but criminal breach of trust.—*Bharut Chunder Christian*, Appellant, 1 W. R. 2. [Kemp and Glover, JJ. Aug. 8, 1864.]

THEFT by constables of property from the house they were employed to guard is punishable under s. 380, and not s. 409, Penal Code.—*Queen v. Boidnath Singh and others*, 3 W. R. 29. [Jackson and Glover, JJ. June 17, 1865.]

A CONSTABLE who dishonestly misappropriates to his own use the pay of his thana police entrusted to him is guilty of criminal breach of trust.—*Queen v. Subdar Meeah*, 3 W. R. 44. [Kemp and Seton-Karr, JJ. July 11, 1865.]

THE mere fact that the prosecutor gave the prisoner time to make out his account, and pay the balance due, does not vitiate a conviction for dishonest misappropriation, or show that the matter is one for the Civil Courts only.—*In re Sreekant Biswas*, 5 W. R. 56. [Macpherson, J. Mar. 24, 1866.]

WHERE a Court Inspector improperly delegated to a constable the custody, &c., of Government money (taking from him private security to save himself from loss in case of defalcation), and the constable dishonestly converted the money to his own use, although he afterwards restored it, the case was held to fall under s. 408, and not s. 409, of the Penal Code, and the sentence reduced from 10 years' transportation, and a fine of Rs. 500, to one year's rigorous imprisonment, without fine.—*Queen v. Banco Madhub Ghose*, 8 W. R. 1. [Seton-Karr and Glover, JJ. June 1, 1867.]

A VILLAGE-SHROFF, whose duty it was to assist in collecting the public revenue, received grain from raiyats, and gave receipts, as if for money received by virtue of a private arrangement. *Held* that he could not be convicted of criminal breach of trust by a public servant under s. 409 of the Penal Code, as he was not authorized to receive the public revenue in kind, and the party who delivered the grain did not thereby discharge himself from liability for the revenue.—*Pro.*, Feb. 12, 1869, 4 Mad. H. C. R. Ap. 32.

S. 409 of the Penal Code does not limit the mode in which a trust arises, whether by specific order, or by reason of its being part of the proper duty of a public functionary. Where, therefore, it was proved that the head clerk of an office entrusted the management of stamps, with the knowledge and sanction of his superiors, to one of his assistants, the latter was held to be guilty of criminal misappropriation by a public servant within the meaning of s. 409 when he made away with the stamps.—*Queen v. Ram Dhun Dey*, 13 W. R. 77. [Jackson and Glover, JJ. May 28, 1870.]

THE naib-nazir is a public servant within the meaning of s. 409 of the Penal Code, and not the mere private servant of the nazir.—*Queen v. Mahmood Hossein*, 2 N. W. P. 298. [Spankie, J. July 18, 1870.]

A TRAVELLER, with considerable property, partly cash and gold coins, put up at a sarai, and, believing himself to be dying, sent to the police-station for protection to his property. The accused, the thana-moharar, went to the sarai, and received charge of the property. *Held* by Lindsay and Fitzpatrick, JJ. (Plowden, J., dissenting), that the accused was entrusted with the property in his capacity of a public servant, within s. 409, as the accused was empowered by s. 95, Criminal Procedure Code (corresponding with s. 149, Act X. of 1882), to receive the property to prevent the commission of an offence, *i.e.*, theft by other persons taking advantage of the illness or death of the traveller.—*Bhag Sing v. Crown*, Panj. Rec., No. 24 of 1876.

THE prisoners were charged with having stolen a sum of money shut up in a box, and placed in the Police Treasury buildings, over which they, as barkandazes, were placed in guard. *Held* that the charge should have been made under s. 381 of the Penal Code (theft by a servant in possession of property), and not under s. 409 (criminal breach of trust by a public servant).—*Queen v. Juggurnath Singh and others*, 2 W. R. 55. [Seton-Karr, Jackson, and Glover, JJ. April 3, 1877.]

WHERE a Magistrate, erroneously holding that the offence committed was one under s. 406, Penal Code, over which he had jurisdiction, instead of under s. 409, which was cognizable only by the Court of Session, tried and sentenced the accused, it was held by the High Court as a Court of revision that his proceedings were contrary to law, and he was directed to commit the case for trial by the Court of Session. To constitute an offence under s. 409 it is not necessary that the property should be that of Government, but that it should have been entrusted to a public servant in that capacity.—*Ram Soonder Poddar and others*, In the Matter of, 2 C. L. R. 515. [Ainslie and Broughton, JJ. June 13, 1878.]

WHERE the accused in his capacity of revenue patel received from the Government treasury small sums of money on account of certain temple-allowances, and did not at once pay over the same to the persons entitled to receive them, as he was bound to do, but it appeared that such persons were willing to trust him, and had actually passed receipts which the accused forwarded to the revenue authorities, *held* that the accused fulfilled the trust reposed in him by Government, and that his mere retention of the money for a time, in the absence of any evidence of dishonesty, did not amount to criminal breach of trust

within the meaning of s. 409 of the Penal Code.—*Queen-Empress v. Ganpat Tápídás*, I. L. R., 10 Bom. 256. [Birdwood and Jardine, JJ. Dec. 17, 1885.]

WHEN a master entrusts his servant with money for the payment of an *open* account, i.e., an account of which the items have never been checked or settled, and the tradesman makes the servant a present, and the transaction amounts to a taxation of the bill and a reduction of the price by the servant, the latter obtains the reduction for his master's benefit, the money in his hands always remains the master's property, and, if he appropriates it, he commits criminal breach of trust. But where the master himself has settled the amount with the tradesman for a specific sum, and sends the servant with the money, and the servant, after making the payment, accepts a present from the tradesman, in that case the servant does not commit criminal breach of trust, inasmuch as the money is given to him by a person whom he believes to have a right to give it, though it may be that, according to the strict equitable doctrines of the Court of Chancery, he is bound to account to the master for the money. *Hay's Case* [*In re Canadian Oil Works Corporation* (L. R., 10 Ch. Ap. 393)] referred to. Where the Court of Session had tried, convicted, and sentenced an accused person under s. 409 of the Penal Code, and the High Court was of opinion that the conviction was not sustainable under that section, the Court refused to alter the finding, under s. 423 of the Criminal Procedure Code, to a conviction for some other offence for which the accused had not been charged or tried. Observations on the necessity of requiring corroboration, in material particulars, of the evidence of an accomplice. *Empress v. Ram Saran* (Weekly Notes, 1885, p. 311) referred to.—*Queen-Empress v. Imdad Khan*, I. L. R., 8 All. 120. [Petheram, C.J. Dec. 21, 1885.]

#### OF THE RECEIVING OF STOLEN PROPERTY.

410. Property the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which \* criminal breach of trust has been committed, is designated as stolen property, "whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India." † But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

A PERSON was convicted and sentenced under s. 411 of the Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had been set at large by some Hindu, in accordance with Hindu religious usage, at the time of performing funeral ceremonies. *Held* that the bull was not, at the time of the alleged misappropriation, "property" within the meaning of the Penal Code, inasmuch as not only was it not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor; that it was therefore "*nullius proprietas*," and incapable of larceny being committed in respect of it; and that the conviction must be set aside.—*Queen-Empress v. Baudhu*, I. L. R., 8 All. 51. [Straight, J. Dec. 7, 1885.]

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

CHARGE.—That you, on or about the \_\_\_\_\_, at \_\_\_\_\_, dishonestly received \_\_\_\_\_, knowing or having reason believe the same to be stolen property, and that you thereby committed an offence punishable under s. 411 of the Indian Penal Code, and within, &c.

\* The words, "the offence of," have been repealed by Act VIII. of 1882, s. 9.

† The words quoted have been inserted by Act VIII. of 1882, s. 9.

A CHARGE, under s. 411 of the Penal Code, of dishonestly receiving stolen property should state that the articles found in possession of the accused were the property of A B, the owner thereof.—Reg. v. Siddu bin Balnath, 1 Bom. H. C. R. 95. [Forbes, Erskine, and Westropp, JJ. Nov. 1863.]

A PERSON convicted of and sentenced for dacoity cannot also be convicted of and sentenced for receiving or retaining the stolen property thereby acquired (Loch, J., *dissentiente*).—Bhyrub Seal and another, W. R. Sp. 27. [Loch, Steer, and Glover JJ. May 2, 1864.]

WHEN stolen property is found in the possession of dacoits, the offence of “knowingly having in possession” is to be considered as included in the original one of dacoity, unless there are circumstances clearly separating the one crime from the other—*e. g.*, length of time or distance.—Queen v. Abool Hossein and others, 1 W. R. 48. [Kemp and Glover, JJ. Dec. 22, 1864.]

THE theft and the taking or retention of stolen goods form one and the same offence, and cannot be punished separately.—Queen v. Sreemunt Adup, 2 W. R. 63. [Glover, J. April 19, 1865.]

WHEN persons are found within six hours of the commission of a dacoity with portions of the plundered property in their possession, the presumption of law is that they are participators in the dacoity, and not merely receivers.—Queen v. Cassy Mul and another, 3 W. R. 10. [Glover, J. May 6, 1865.]

WHEN a prisoner is apprehended eight days after a dacoity with part of the plunder in his possession, there is as good ground for charging him with the dacoity as with having received or retained with guilty knowledge, and he ought to be charged in the alternative form.—Queen v. Motee Jolaha, 5 W. R. 66. [Jackson, J. April 9, 1866.]

THE prisoner, who, having received stolen property, concealed it in his house, could not be charged and convicted for two offences, *viz.*, of having dishonestly received stolen property under s. 411, and of assisting in the concealment of stolen property under s. 414, which applies to persons whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it.—Government v. Mussammatt Nowlia, 1 Agra H. C. R. 9. [Pearson and Spankie, Offg. JJ. Aug. 1, 1866.]

EVIDENCE of guilty knowledge is necessary to a conviction on a charge of dishonestly retaining stolen property.—Queen v. Doyal Shilydar and another, 6 W. R. 87. [Loch and Macpherson, JJ. Dec. 3, 1866.]

IN order to sustain a conviction under s. 412 of the Penal Code of receiving property stolen at a dacoity, it is necessary to prove that the prisoner knew, or had reason to believe, that dacoity had been committed, or that the persons from whom he acquired the property were dacoits.—Queen v. Jogeshur Bagdee and others, 7 W. R. 73. [Norman, Seton-Karr, and Hobhouse, JJ. May 28, 1867.]

RECOGNITION of things not before the eyes of deposing witnesses is not evidence against a person accused of having been in possession of those things.—Queen v. Mussammut Joomnee and another, 8 W. R. 16. [Kemp and Glover, JJ. June 17, 1867.]

THE police may, without any formal complaint, apprehend any person found with stolen property. They have also the power of searching any house suspected of containing stolen property.—Queen v. Govree Singh, 8 W. R. 28. [Loch, J. June 26, 1867.]

To support a conviction for receiving or possessing stolen property, there must be proof (1) that the property was of the description “stolen,” and (2) that accused was in possession with a guilty knowledge.—Crown v. Eshur Singh, Panj. Rec., No. 8 of 1867, and the same case, Panj. Rec., No. 13 of 1867.

WHERE loss is occasioned to a person whose property has been stolen, it is not illegal for the trying Magistrate to award a portion of the fine inflicted on the accused as amends to the owner of such property, although the stolen property is recovered and restored to the owner.—Reg. v. Yessappa bin Ningappa, 5 Bom. H. C. R. 41. [Newton, Offg. C.J., and Tucker, J. May 20, 1868.]

ACCUSED was employed by the Panjáb Bank as its treasurer at Multán. After serving for a few days in that capacity, he, with the consent of the Bank, put in one D as his agent or gomashtha, himself removing to other employment at Amritsar, but continuing to receive pay from the Bank. D misappropriated certain moneys of the Bank, and finally absconded. The Sessions Court found that accused had received some of the misappropriated

money from D, and had connived at D's defalcation ; and convicted him of criminal breach of trust as a servant, and of abetting the same. In appeal it was contended for the accused, *inter alid*, that he was treasurer only in name, and had no dominion over the misappropriated property ; consequently he was not a participator in reference to D's defalcation ; and as to the latter, he was the servant of the accused, not of the Bank, so that, whatever his offence, he had not committed breach of trust as a servant. Found by the Chief Court, that both accused and D were servants of the Bank, that D had committed breach of trust as such, and that accused had received the misappropriated money from D with a guilty knowledge. On the question whether this amounted to abetment of D's offence, or to dishonest receiving under s. 411, it was held that although no act done by accused after D's offence was committed would make the former guilty as an abettor, yet as accused, who, as the Bank's treasurer, was bound to disclose the fact that he had irregularly received the Bank's money on the first defalcation, did not do so, he was guilty of an illegal omission, by which he voluntarily caused the safe abstraction and transmission to himself of the second sum, and had thereby abetted the breach of trust by a servant.—*Kaloo Ram v. Crown*, Panj. Rec., No. 30 of 1868.

THE offence of dishonest retention of stolen property under s. 411 of the Penal Code may be complete without any guilty knowledge at the time of receipt.—*Pro.*, April 6, 1869, 4 Mad. H. C. R. Ap. 42.

WHERE property sufficiently identified to be the property of one person is found to be in the possession of another person without leave or license, or any legal permission of the owner, it is for the party in whose possession the property is found duly to account for its possession, and unless he can do so, a jury might fairly infer in such circumstances that it was with a guilty knowledge that the prisoner took that which he knew to be not his own.—*Queen v. Shuruffooddeen and another*, 13 W. R. 26. [Bayley and Glover, JJ. Feb. 14, 1870.]

THE practice of dividing the facts which constitute the parts of one offence into several minor offences condemned. A person convicted of dacoity under s. 395 cannot be convicted also of dishonestly receiving stolen property under s. 411, or of receiving stolen property transferred by commission of dacoity under s. 412, when there is no evidence of the commission. Mode of treating the confession of prisoners as evidence in a case of receiving stolen property pointed out.—*Queen v. Shahabut Sheikh and others*, 13 W. R. 42. [Norman, Offg. C.J., and Bayley, J. Mar. 8, 1870.]

IN a case in which the accused is charged with receiving stolen property, it must be clearly proved that he retained the property with a guilty knowledge.—*Meer Yar Ali*, Petitioner, 13 W. R. 70. [Bayley and Mitter, JJ. May 7, 1870.]

THERE being no evidence on the record to show that property, for the dishonestly receiving of which a prisoner had been convicted under s. 411 of the Penal Code, was actually stolen, the conviction and sentence under such section will be annulled.—*Queen v. Buldeo Pershad*, 2 N. W. P. 187. [Spankie, J. May 18, 1870.]

A PRISONER cannot be convicted under s. 411 of the Penal Code for dishonestly receiving or retaining stolen property in respect of property which he himself has been convicted, under s. 409, Penal Code, of having obtained possession by committing criminal breach of trust.—*Queen v. Shunkur*, 2 N. W. P. 312. [Spankie, J. Aug. 5, 1870.]

A's PROPERTY was stolen and pledged by the thief to B, who received it without guilty knowledge. The Chief Court ordered the property to be restored to A under s. 132B of Act VIII. of 1869.—*Bhara Mull v. Crown*, Panj. Rec., No. 37 of 1870. But see *Crown v. Sawan*, Panj. Rec., No. 21 of 1878, *infra*, p. 353.

MERE possession of stolen articles of trifling value does not warrant the presumption that the receiver knew them to have been the proceeds of a dacoity, or had acquired them from one whom he knew or believed to be a dacoit.—*Queen v. Samiruddin*, 18 W. R. 25. [Kemp and Glover, JJ. July 3, 1872.]

A CONVICTION of an offence under s. 411 of the Penal Code was set aside in the absence of evidence on the record that the property was Government property, that it was stolen property, or that the accused knew, or had reason to believe, it was stolen.—*Queen v. Dussorut Dass*, 18 W. R. 63. [Kemp and Pontifex, JJ. Nov. 18, 1872.]

UNLESS the sale take place in market overt (as explained in s. 13, para. 7, Panjáb Civil Code), a *bona fide* purchaser of stolen property acquires no title to it. He must restore the property to the original owner, looking to the seller for his remedy.—*Crown v. Gurdit Singh*, Panj. Rec., No. 7 of 1872.

WHERE a person was charged under s. 411 of the Penal Code with having received stolen property (rubber, the produce of the Government forests at Cachar), and it was not proved that the rubber came from the Government forests, or that it was stolen property, and that the prisoner knew that it was stolen property, it was held that the conviction under s. 411 was bad, and that he could not be convicted of smuggling, smuggling Indian rubber not being an offence under the Penal Code.—*Queen v. Bajo Huri*, 19 W. R. 37. [Couch, C.J., and Glover, J. Feb. 20, 1873.]

THE only evidence of the receipt of stolen property by a wife was the fact that the property was found in the house where she lived with her husband. *Held* that that constituted the possession of the husband rather than that of the wife.—*Queen v. DeSilva*, 5 N. W. P. 120. [Jardine, J. April 19, 1873.]

IN a case in which the accused was charged with having stolen a pony, the Magistrate sentenced the accused to imprisonment, and awarded a fine of Rs. 25, which, he ordered, should, if realized, be paid over to the complainant, directing at the same time that the pony should be restored to a third party, by whom it had been purchased *bond fide* at a public sale, the Magistrate relying on s. 418, Code of Criminal Procedure (Act X. of 1872), corresponding with s. 517, new Code of Criminal Procedure (Act X. of 1882), and on the rule of English law protecting a *bond-fide* purchaser in market overt. The Sessions Judge considered that s. 418 of the Code of 1872 (or s. 517 of the Code of 1882) was not intended to supersede s. 108,\* Act IX. of 1872, and that, as under the latter law, the property in the pony did not pass to the third party (purchaser), the pony should have been restored to the prosecutor. *Held* that the fine of Rs. 25 imposed upon the prisoner could not be paid over to the complainant, either under s. 418 of the Code of 1872 (*i. e.*, s. 517 of the Code of 1882), or under any supposed rule of law relating to sales in market overt, and that, if any such order could be made, it would be under s. 308 of the Code of 1872 (or s. 545 of the Code of 1882). The order, so far as it directed that the fine be paid to the complainant, was accordingly set aside.—*Nobokristo Acharjee v. Lall Chand Sheikh*, 20 W. R. 38. [Markby and Birch, JJ. June 19, 1873.]

PROPERTY suspected of being stolen may be confiscated under s. 418 of Act X. of 1872 (corresponding with s. 517 of Act X. of 1882), although the person charged with stealing it is discharged.—*Phulla Singh v. Ram Singh*, Panj. Rec., No. 20 of 1873.

THE accused were found in possession of stolen property, the produce of several separate thefts. *Held* that they could not be convicted of several separate acts of receiving, unless there was evidence that they did not receive all the property at one and the same time.—*Crown v. Rampershad*, Panj. Rec., No. 5 of 1874.

POSSESSION of property which has been stolen from the owner is generally at best only evidence of theft when the date of the theft is so recent as to make it reasonable to presume in the absence of explanation that the person in whose possession the property is found must have obtained the possession by stealing.—*Queen v. Poromeshur Aheer*, 23 W. R. 16. [Phear and Morris, JJ. Jan. 8, 1875.]

MONEY obtained upon forged money-orders is not "stolen property" within the definition thereof given in the Penal Code, s. 410.—*Queen v. Mon Mohun Roy and another*, 24 W. R. 33. [Birch and Lawford, JJ. July 26, 1875.]

THE goods received must be the identical goods which were stolen, and not something for which they had been sold or exchanged. Where A stole six notes for £100, and changed them into notes for £20, some of which he gave to B, it was ruled that B could not be convicted of receiving, as he had not received the notes which were stolen.—*R. v. Walkley*, 4 C. & P. 132; Arch., 20th ed., p. 496.

NOT only must it be shown that the property was originally stolen property, but also that it continued in that state at the time of the receipt. In one case goods had been stolen, and when the thief was detected, they were taken from him, and then restored by the owner's consent, that he might sell them to a person who had been in the habit of buying his booty. When the latter was indicted as a receiver, it was held that he could not be convicted, inasmuch as at the time of the receipt the goods were not *stolen* goods.—*Reg. v. Dolan*, 24 L. J. M. C. 59; Dears. 436; see *Reg. v. Schmidt*, 1 L. R. C. C. 15.

WHERE stolen property is found with a person who admits having received it, it may be fairly presumed that the receipt was a dishonest one, unless the receiver's conduct is satisfactorily explained.—*Ramjoy Kurmoker*, Petitioner, 25 W. R. 10. [Macpherson, Glover, and Mitter, JJ. Jan. 6, 1876.]

\* For s. 108, Act IX. of 1872 (Contract Act), and annotations thereon, see *infra*, p. 356.



ALTHOUGH a person who is convicted of theft cannot, in respect of the same property, be convicted at the same time of receiving stolen property, yet a person who is acquitted of the theft of any property, or who is not charged with stealing it, may, in respect of the identical property, be charged with, and convicted of, receiving it, knowing it to be stolen; so that the mere fact of a person's having once been acquitted of the charge of stealing any property does not of itself prevent his trial at any future time on the charge of receiving the same property knowing it to be stolen.—*Queen v. Nyaz Ali*, 25 W. R. 47. [Kemp and Glover, JJ. May 25, 1876.]

A MAGISTRATE has jurisdiction under s. 418, Act X. of 1872 (corresponding with s. 517, Act X. of 1882), to deal with property stolen in British territory, notwithstanding that it may be seized in foreign territory, and brought into British territory by the police.—*Musammatt Kishen Kour v. Crown*, Panj. Rec., No. 20 of 1878.

IN a summary proceeding under s. 418 of the Criminal Procedure Code (corresponding with s. 260, Act X. of 1882), where stolen property is in the possession of a *bond fide* purchaser, the proper order for a Magistrate to pass is to leave the property in the purchaser's possession, leaving the complainant to take such steps as he may think proper to establish his title as owner, and recover possession from the purchaser.—*Crown v. Sawan*, Panj. Rec., No. 21 of 1878.

THE mere being in possession of stolen property dishonestly without a guilty knowledge is not a substantive offence. It is an offence under s. 411 to dishonestly receive stolen property knowing or having reason to know the same to be stolen property, or to dishonestly retain it with the like knowledge. To support a conviction of dishonestly retaining stolen property, it ought to be shown that the accused, being in innocent possession of the property, acquired the knowledge that it was stolen, and thereafter retained it dishonestly. When a person is shown to stand in such a relation to stolen property as falls short of possession by him of such property, his manner of dealing with the property may warrant a charge of assisting in concealing or disposing of or making away with the property with a guilty knowledge, that is, a charge of an offence under s. 414.—*Khona v. Empress*, Panj. Rec., No. 31 of 1879.

A HINDU, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family he lived in commensality with it, but he did not treat such property as joint family property, but as his own property. Held that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted of theft in respect of it. It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property.—*Empress v. Sita Ram Rai*, I. L. R., 3 All. 181. [Straight, J. Aug. 16, 1880.]

THE word "believe" in s. 414 of the Penal Code is much stronger than the word "suspect," and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing was stolen property. It is not sufficient in such a case to show that the accused person was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired.—*Empress v. Rango Timáji*, I. L. R., 6 Bom. 402. [Melvill and Nánabhái Haridás, JJ. Dec. 21, 1880.] A full report of this case is reproduced at p. 362, *infra*.

WHERE the accused, a foreigner, was found in foreign territory in possession of stolen property, but it was not shown that he was one of those who had committed the theft, or that he had possession of the property in British territory, held that a conviction under s. 411 was not sustainable. *Musammatt Kishen Kour v. Crown*, Panj. Rec., No. 20 of 1870, cited and followed.—*Hazar Mir v. Empress*, Panj. Rec., No. 16 of 1880.

THE prisoner was tried at Bombay, under s. 411 of the Penal Code, on a charge of having dishonestly received and retained stolen property, knowing or having reason to believe the same to be stolen property. He was also charged, under ss. 108 (expl. 3) and 109, with having abetted that offence. It appeared at the trial that the prisoner was a clerk in the employment of a mercantile firm at Port Louis, in the island of Mauritius. On the 29th October and the 1st November 1879, certain letters addressed by the firm to their commission-agent at Bombay were abstracted from the post-office at Port Louis. The letters contained six bills of exchange belonging to the firm for an aggregate amount of Rs. 26,550. On the 1st November 1879, the prisoner sent all six bills of exchange in

a letter to the manager of a bank at Bombay, requesting that the several amounts might be collected on the prisoner's own account, and remitted to him by bills on Mauritius. The sums were accordingly realized by the bank, and duly remitted to the prisoner. It was not denied that the prisoner obtained possession of the money, and used it as his own. His defence was that the bills had been given to him in payment of a debt. The prisoner was convicted on all the charges; but, the jurisdiction of the Court having been challenged on his behalf, the question was reserved. *Held per Sargent and Melvill, JJ. (West, J., dissentiente)*, "that the bills of exchange having been stolen at Mauritius, in which island the Penal Code is not in force, could not be regarded as 'stolen property' within the provisions of s 410, so as to render the person receiving them at Bombay liable under s. 411; that the High Court of Bombay had, therefore, no jurisdiction; and that the conviction must be quashed." Previously to the trial at the Sessions the prisoner had applied to the Court for commissions to Pondicherry and Mauritius to take evidence on his behalf. The application was refused on the ground that the High Court had no authority to issue a commission in such a case, but the learned Judge (West, J.) reserved the question for the Full Court. *Held* that the High Court had no power to issue a commission out of the jurisdiction in a criminal case on an application by the accused.—*Empress v. S. Moorga Chetty*, I. L. R., 5 Bom. 338. [Sargent, Melvill, and West, JJ. May 3, 1881.]

A PRISONER cannot be tried at the same trial for receiving or retaining (s. 411, Penal Code), and habitually receiving or dealing in (s. 443) stolen property. The proper course is to try the accused first for the offences under s. 411, and, if he is convicted, to try him under s. 413, putting in evidence the previous convictions under s. 411, and proving the finding of the rest of the property in respect of which no separate charge under s. 411 could be made or tried by reason of the provisions of s. 453 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 234 of the new Code of Criminal Procedure (Act X. of 1882).—In the Matter of the Petition of Uttom Koondoo and another; *Empress v. Uttom Koondoo* and another, I. L. R., 8 Cal. 634; 10 C. L. R. 466. [McDonnell and Field, JJ. Mar. 31, 1882.]

IN considering whether the possession of stolen goods raises a presumption of dishonest receipt of stolen property, the attention of the jury should be drawn to the necessity of satisfying themselves that the possession is clearly traced to the accused. The fact of stolen property being found concealed in a man's house would be sufficient to raise a presumption that he knew the property to be stolen property, but it would not be sufficient to show that it had been acquired by dacoity.—*Empress v. Malhári*, I. L. R., 7 Bom. 731. [Melvill and Pinhey, JJ. Oct. 11, 1882.]

THE fact that a child has been tried for theft and discharged under s. 215 of the Code of Criminal Procedure, 1872 (corresponding with s. 253 of the new Code of Criminal Procedure, 1882), on the ground of want of understanding within the meaning of s. 82 of the Penal Code, is no bar to the conviction of a person charged under s. 411 of the Penal Code with receiving the property alleged to have been stolen.—*Queen v. Krishna*, I. L. R., 6 Mad. 373. [Kernan and Muttusámi Ayyár, JJ. April 24, 1883.]

WHERE a person is accused of an offence under s. 411 of the Penal Code, he cannot, where the circumstances do not raise the presumption that he received the property knowing it to be stolen, be convicted of that offence merely because he is in possession of the property, and does not account for his possession. The prosecution must prove both that the property was stolen, and that the accused received it dishonestly. At the trial of a person for an offence under s. 411 of the Penal Code, the Court of Session, under s. 33 of the Evidence Act, 1872, used against the accused the evidence of the owner of the property in respect of which the accused was charged and of his wife taken by commission during the inquiry, and the evidence of the servant of those persons taken at the inquiry, and also the evidence of the owner of the property taken during the trial under a commission issued by the Sessions Judge under s. 503 of the Criminal Procedure Code. The grounds upon which the Sessions Judge admitted the evidence taken during the inquiry were that the attendance of the witnesses could not be procured without an expense of Rs. 500, an amount which he considered unreasonable, that the witnesses would be inconvenienced, and that their evidence did not concern the accused personally, having reference only to the identification of the property in respect of which the accused was charged. *Held* that the Sessions Judge had improperly admitted such evidence. Inconvenience to witnesses is no ground allowed under s. 33 of the Evidence Act, and the question of identification was a most material one, and the evidence of the witnesses in question was of the utmost moment, the whole case resting on it; and as regards the ground of expense, it

was impossible to consider the amount unreasonable, considering that the entire case rested on the evidence of those witnesses, and that the accused had not cross-examined those whose evidence had been taken by commission, nor, looking at his position, could he arrange for their cross-examination. *Held* also that on similar grounds the Sessions Judge was not justified in issuing a commission under s. 503 of the Criminal Procedure Code.—*Empress v. Burke* (T.), I. L. R., 6 All. 224. [Oldfield, J. Feb. 16, 1884.]

A SESSIONS Judge cannot tender a pardon to an accused under s. 338 of the Code of Criminal Procedure (Act X. of 1882), where the offence for which he has been committed is not triable exclusively by the Court of Session, such as an offence under s. 411 of the Penal Code.—*Empress v. Sadhee Kasal*, I. L. R., 10 Cal. 936. [Prinsep and Macpherson, JJ. July 1, 1884.]

A COMMON brass drinking cup was stolen in October 1883, and was discovered in the possession of the accused in September 1884. *Held* in a case in which the accused was tried for receiving stolen property, that his possession of the stolen property, coupled with the fact that he had failed to give an account as to how he became possessed of the property, would, under ordinary circumstances, raise a probable presumption of his guilt, but where, as in this case, such possession was not a recent possession, but one eleven months subsequent to the act of theft, the presumption against him was so slight that, taken by itself, he ought not to be called upon to explain how his possession was acquired. The question of what is or is not a recent possession of stolen property is to be considered with reference to the nature of the article stolen. *Rex v. Adam* (3 C. & P. 600), *Rex v. Cooper* (3 C. & P. 318), *Rex v. Partridge* (7 C. & P. 551), followed.—*Ina Sheikh v. Queen-Empress*, I. L. R., 11 Cal. 160. [Mitter and Norris, JJ. Jan. 7, 1885.]

THE civil station at Rájkot is not part of British India within the meaning of Stat. 21 and 22 Vic., c. 106. Where the accused, a subject of a Native State, committed theft at Rájkot Civil Station, and was found in possession of the stolen property at Thána, *held* that as the offence was not committed in British India, and as the accused was the subject of a Native State, the Sessions Court at Thána had no jurisdiction to try the accused for theft under s. 381 of the Penal Code. But it was competent to try him for dishonest retention of stolen property under s. 410 of the Penal Code as amended by Act VIII. of 1882.—*Queen-Empress v. Abdul Latib valad Abdul Rahiman*, I. L. R., 10 Bom. 186. [Birdwood and Jardine, JJ. Nov. 24, 1885.]

A PERSON was convicted and sentenced under s. 411 of the Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had been set at large by some Hindu, in accordance with Hindu religious usage, at the time of performing funeral ceremonies. *Held* that the bull was not, at the time of the alleged misappropriation, "property" within the meaning of the Penal Code, inasmuch as not only was it not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor; that it was therefore "*nullius in rem*," and incapable of larceny being committed in respect of it; and that the conviction must be set aside.—*Queen-Empress v. Bandhu*, I. L. R., 8 All. 51. [Straight, J. Dec. 7, 1885.]

A HINDU who, upon the death of a relative, dedicates or lets loose a bull, in accordance with Hindu religious usage, as a pious act for the benefit of the soul of the deceased, thereby surrenders and abandons all proprietary rights in the animal, which thereafter is not "property" which is capable of being made the subject of dishonest receipt or possession within the meaning of ss. 410 and 411 of the Penal Code. *Queen-Empress v. Bandhu* (I. L. R., 8 All. 51) and *Queen-Empress v. Jamura* (Weekly Notes, 1884, p. 87) referred to.—*Queen-Empress v. Nihal*, I. L. R., 9 All. 348. [Straight, J. Jan. 7, 1887.]

A CHARGE of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.—Crim. Pro. Code (Act X. of 1882), s. 180, ill. b.

SEVERAL stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B therefore voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under ss. 411 and 414 of the Penal Code.—Crim. Pro. Code (Act X. of 1882), s. 235, ill. j.

THE offence of receiving or retaining stolen property under s. 411 of the Penal Code may be tried summarily by (1) the District Magistrate; (2) any Magistrate of the First

Class specially empowered in this behalf by the local Government; and (3) any Bench of Magistrates invested with the powers of a Magistrate of the First Class, and specially empowered in this behalf by the local Government.—Crim. Pro. Code (Act X. of 1882), s. 260.

A is accused of receiving stolen goods knowing them to be stolen. It is proved that he was in possession of a particular stolen article. The fact that, at the same time, he was in possession of many other stolen articles, is relevant, as tending to show that he knew each and all of the articles of which he was in possession to be stolen.—Evidence Act (I. of 1872), s. 14, ill. a.

A is accused of receiving stolen goods knowing them to be stolen. He offers to prove that he refused to sell them below their value. A may prove these statements, though they are admissions, because they are explanatory of conduct influenced by facts in issue.—Evidence Act (I. of 1872), s. 21, ill. d.

A is accused of receiving stolen property knowing it to have been stolen. It is proposed to prove that he denied the possession of the property. The relevancy of the denial depends on the identity of the property. The Court may, in its discretion, either require the property to be identified before the denial of the possession is proved, or permit the denial of the possession to be proved before the property is identified.—Evidence Act (I. of 1872), s. 136, ill. c.

WHEN an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence. When a High Court or a Court of Session makes such order, and cannot, through its own officers, conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate. When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is livestock, or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of. Explanation.—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise. —Crim. Pro. Code (Act X. of 1882), s. 517.

TO ASSIST a Court in making a proper order for the disposal of property under s. 517 of the Criminal Procedure Code (Act X. of 1882), it has been thought necessary to reproduce s. 108 of the Contract Act (IX. of 1872), which runs as follows:—

Title conveyed by seller of goods to buyer. 108. No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:—

*Exception 1.*—When any person is, by the consent of the owner, in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate, wharfinger's certificate, or warrant or order for delivery, or other document showing title to goods, he may transfer the ownership of the goods of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary: Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods or documents has no right to sell the goods.

*Exception 2.*—If one of several joint-owners of goods has the sole possession of them by the permission of the co-owners, the ownership of the goods is transferred to any person who buys them of such joint-owner in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods has no right to sell them.

*Exception 3.*—When a person has obtained possession of goods under a contract voidable at the option of the other party thereto, the ownership of the goods is transferred to a third person who, before the contract is rescinded, buys them in good faith of the person in possession; unless the circumstances which rendered the contract voidable amounted to an offence committed by the person in possession or those whom he represents.

In this case the original seller is entitled to compensation from the original purchaser for any loss which the seller may have sustained by being prevented from rescinding the contract.

### Illustrations.

(a) A buys from B, in good faith, a cow which B had stolen from C. The property in the cow is not transferred to A.

(b) A, a merchant, entrusts B, his agent, with a bill of lading relating to certain goods, and instructs B not to sell the goods for less than a certain price, and not to give credit to D. B sells the goods to D for less than that price, and gives D three months' credit. The property in the goods passes to D.

(c) A sells to B goods of which he has the bill of lading, but the bill of lading is made out for delivery of the goods to C, and it has not been endorsed by C. The property is not transferred to B.

(d) A, B, and C, are joint Hindoo brothers, who own certain cattle in common. A is left by B and C in possession of a cow, which he sells to D. D purchases *bona fide*. The property in the cow is transferred to D.

(e) A, by a misrepresentation not amounting to cheating, induces B to sell and deliver to him a horse. A sells the horse to C before B has rescinded the contract. The property in the horse is transferred to C; and B is entitled to compensation from A for any loss which B has sustained by being prevented from rescinding the contract.

(f) A compels B by wrongful intimidation, or induces him, by cheating or forgery, to sell him a horse, and, before B rescinds the contract, sells the horse to C. The property is not transferred to C.

### ANNOTATIONS ON S. 108 OF THE CONTRACT ACT.

Section 108 was proposed by the Select Committee of the Legislative Council, and adopted by the Council, in lieu of one prepared by the Indian Law Commissioners, by which it was proposed to confer upon every possessor of moveable property the power of making a good title to a *bona fide* purchaser. The following passage from the report of the Law Commissioners gives their reasons for this proposal:—

"With regard to goods sold by a person who has no right to sell them, the general rule of English law is that the owner of the goods retains the ownership notwithstanding his having lost the possession of them and their having been sold to a third person. But from this rule there is an exception in the case of goods sold in open market, an expression which, by the custom of London, applies to every shop within the city.

"It cannot be denied that the subject is difficult. We have to consider, on one hand, the hardship suffered by an innocent person who loses in this way his right to recover what was his undoubted property. But, on the other hand, still greater weight appears to us to be due to the hardship which a *bona fide* purchaser would suffer were he to be deprived of what he bought. The former is very often justly chargeable with remissness or negligence in the custody of the property. The conduct of the latter has been blameless. The balance of equitable consideration is, therefore, on the side of a rule favourable to the purchaser; and we think

that sound policy with respect to the interests of commerce points to the same conclusion.

"We have, therefore, provided that the ownership of goods may be acquired by buying them from any person who is in possession of them, if the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession has no right to sell them."

The reasons of the Select Committee of the Legislative Council for the opposite view were as follow:—

"The first question is whether the law ought to proceed upon the assumption that a person whose property had been stolen is negligent.

"Thefts are commonly effected in one of three ways, by force, by fraud, or by a breach of confidence. It appears to us that, in each of these cases, it would be improper to speak of the person who lost the property as negligent.

"A man is stripped of all his property by robbers, and nearly murdered for defending himself. Is he negligent? A gang of thieves enter a house unperceived, by digging through the wall at night, and carry off the property contained in it. Are the owners of the house negligent? A servant steals plate under his charge. Cattle left by night on an open pasture, or crops not specially watched by night, are stolen. Are the owners in these cases negligent? These are

ANNOTATIONS ON S. 108 OF THE CONTRACT ACT—*contd.*

typical instances of the commonest forms of theft; and it appeared to us that, in comparison with them, the cases in which an owner is really negligent—as, for instance, where a man leaves valuable property unwatched in a public place—are of very rare occurrence. We therefore regarded innocence on the part of the owner as the rule, and negligence as the exception.

“Assuming, then, that the common case is that in which both the owner and the purchaser of the stolen goods are innocent, upon whom ought the loss to fall? We thought it ought to fall upon the purchaser for the following reasons:—

“1st. The only argument offered in support of the suggestion that it should fall upon the original owner, assumes that every man is negligent who depends upon the protection afforded by law to his property, even when it is in his personal custody, and can be taken from him only by personal violence. We thought, on the contrary, that people have a right to expect the law to protect them against superior force and also against fraud so gross as to amount to crime. Against fraud which amounts only to a civil injury—as in the case of selling an article to which the vendor has no title—prudent men may be expected to protect themselves. The proposed section reverses this. It would protect a man who has been overreached in a bargain, at the expense of another whom it regards as negligent, because he has been robbed on the highway.

“2nd. A person who has been robbed by force or fraud suffers a greater injury than a person who has been overreached in a bargain. It follows that, if an innocent purchaser is obliged to return stolen goods, he will, in most cases, suffer less than the innocent owner would suffer if the purchaser were allowed to retain them.

“3rd. To give thieves the legal power of effecting a change in property against the will of the true owner, recognizes and favours crime. We thought that no one should be permitted to derive any benefit from a crime, even if he was mixed up with it innocently and accidentally, and that, when such a transaction was brought in any form under the notice of the law, things should be restored, as far as possible, to the condition in which they would have been, if the crime had not been committed. The *bona fide* purchaser of stolen goods would derive an advantage from theft, if the suggestion of the Commissioners were adopted. Their proposal would enable a thief, whose object was revenge, to carry out his purpose by the express warrant of law.

“4th. The proposed change would favour receivers of stolen goods. Such persons are often in outward appearance respectable. Under the proposed section, the thief would not, indeed, be able to confer a good title upon the receiver, but the receiver would be able to confer a good title upon his customers.

“5th. If the *bona fides* of the purchaser is to be the test of the validity of the transfer, it will become necessary to decide, as a fact, in each particular case, whether the purchaser acted in good faith or not. We considered it undesirable to enter upon this inquiry.

“The Commissioners' draft left open the question whether, upon the principle that the law presumes innocence, the owner is to prove the purchaser's bad faith, or whether, upon the principle that a man is bound to prove facts within his knowledge, the purchaser is to prove his own good faith. The adoption of either branch of the alternative would, we thought, be mischievous.

“If the original owner was to prove the purchaser's bad faith, receivers of stolen goods would be practically secure. How could a man whose goods had been stolen prove the circumstances under which the thief sold them? How, except by accident, could he ever be able to prove matters connected with the sale which ought to have roused the buyer's suspicions? How, in short, could he give proof of what did actually pass, or even of what ought to have passed, in another man's mind upon an occasion as to which his information must be incomplete?

“If, on the other hand, the purchaser was put to prove his good faith, how was he to do so? The common case would be, that he knew nothing of the seller except that he offered the goods for sale at a moderate price. If this was enough, every receiver of stolen goods would escape. If it was not enough, honest purchasers would, in most cases, be regarded as receivers of stolen goods. They would have to return the property which it was the object of this section to secure to them, and, in doing so, they would lose their characters as well as their money.

“In short, it was essential to the proposed section that, for the purpose of proving a doubtful matter of fact, we should choose between two rules of evidence, of which one would discourage honesty, and the other favour crime. This difficulty might be altogether avoided by preferring the true owner who must have a good title, to the purchaser who might be an undetected receiver of stolen goods.

ANNOTATIONS ON S. 108 OF THE CONTRACT ACT—*contd.*

"6th. The proposed enactment would remove one of the greatest of the existing motives for the detection of crime. If a man who had lost his property by theft was not to recover it, unless he could prove bad faith on the part of the purchaser, he would not care to prosecute the thief. In many parts of India, cattle are the most important kind of property, and cattle-stealing is the commonest of offences. As matters now stand, stolen cattle are systematically tracked sometimes for hundreds of miles, and for weeks or months together. When discovered the owner retakes them. So well is this system established, that there are persons who make it their profession to track stolen cattle, and that buyers take security from sellers to indemnify them if the cattle should have to be given up to their true owners. This constitutes a considerable security against cattle-theft, but the whole system would come to an end if the owner could not recover his cattle without proving bad faith in the purchaser.

"7th. The universal practice of India is that the loss in case of theft should fall on the purchaser. This, the Committee were informed, is the law of all the independent native states, both within and on the border of our territories. If our law were different, British territory would become an asylum for cattle-stealers, and all the native states would feel themselves deeply injured.

"8th. The effect of the section upon the position of bailees would be very singular, and we thought undesirable. It would invest every bailee, for whatever purpose, with the power of selling the goods bailed as he would be able to make a good title to them, and if he offered to account for the price to the true owner, it seemed to us very doubtful whether he would be punishable for criminal breach of trust. A lodger sells the furniture of his lodgings for an inadequate sum, and pays the money to the landlord. The landlord under the proposed section would lose his property absolutely, and have no remedy at all, unless the transaction were regarded as a 'dishonest misappropriation,' which seems rather an abuse of terms. The case was not perhaps likely to happen; but if dishonest persons were once made aware of the existence of such a law, we feared that it would be extensively used for the perpetration of frauds, which it would be very difficult to detect."

*Illustration (a)* was held not similar to a case in which a Government currency-note was stolen from A and cashed by B in good

faith for C, and on the conviction of C for theft, the Magistrate ordered the note to be returned to B.\*

The law as enacted in this section has virtually been adopted in the new Factors Act 40 & 41 Vic. c. 39. The Preamble recites: "Whereas doubts have arisen with respect to the true meaning of certain provisions of the Factors Acts, and it is expedient to remove such doubts and otherwise to amend the said Acts, for the better security of persons buying, or making advances on, goods, or documents of title to goods, in the usual and ordinary course of mercantile business:" be it enacted, &c.

S. 2 provides as follows with respect to secret revocation of entrustment or agency:—

"Where any agent or person has been entrusted with and continues in the possession of any goods, or documents of title to goods, within the meaning of the principal Acts as amended by this Act, *any revocation of his entrustment or agency shall not prejudice or affect the title or rights of any other person who, without notice of such revocation, purchases such goods, or makes advances upon the faith or security of such goods or documents.*"

S. 3 enacts as follows with respect to vendors permitted to retain documents of title to goods:—

"Where any goods have been sold, and the vendor or any person on his behalf continues or is in possession of the documents of title thereto, any sale, pledge, or other disposition of the goods or documents made by such vendor or any person or agent entrusted by the vendor with the goods or documents within the meaning of the principal Acts as amended by this Act so continuing or being in possession, shall be as valid and effectual as if such vendor or person were an agent or person entrusted by the vendee with the goods or documents within the meaning of the principal Acts as amended by this Act, provided the person to whom the sale, pledge, or other disposition is made has not notice that the goods have been previously sold."

S. 4 enacts as follows with respect to vendees permitted to have possession of documents of title to goods:—

"Where any goods have been sold or contracted to be sold, and the vendee, or any person on his behalf, obtains the possession of the documents of title thereto from the vendor or his agents, any sale, pledge, or disposition of such goods or documents by such vendee so in possession or by any other person or agent entrusted by the vendee

\* *Empress v. Joggesur Mochi*, 1 L. R., 3 Cal. 379.

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with the documents within the meaning of the principal Acts as amended by this Act, shall be as valid and effectual as if such vendee or other person were an agent or person entrusted by the vendor with the documents within the meaning of the principal Acts as amended by this Act, provided the person to whom the sale, pledge, or other disposition is made has not notice of any lien or other right of the vendor in respect of the goods."

And s. 5 thus provides with respect to transfers of documents of title:—

"Where any document of title to goods has been lawfully indorsed or otherwise transferred to any person as a vendee or owner of the goods, and such person transfers such document by indorsement (or by delivery where the document is by custom or by its express terms transferable by delivery, or makes the goods deliverable to the bearer) to a person who takes the same *bond fide* and for valuable consideration, the last-mentioned transfer shall have the same effect for defeating any vendor's lien or right of stoppage *in transitu* as the transfer of a bill of lading has for defeating the right of stoppage *in transitu*."

The possession which is meant by the first part of excep. 1 of this section (108) is a possession which is unqualified, and not to be restricted otherwise than by the owner giving instructions to the person who has it. It is the kind of possession which a factor or agent has, where the owner of the goods, although he has parted with the possession, may give instructions to the person in possession what to do with the goods. It is such possession as an owner has; and in such a case the person selling contrary to his instructions gives a title to a buyer acting in good faith. The exception does not apply where there is only a qualified possession, such as a hirer of goods has, or where the possession is for a specific purpose. In such a case the owner has no right to give instructions. The nature of the possession and the power of the person having it are determined by the contract of hiring or the contract under which possession was taken; and is of a different nature from the unqualified possession above mentioned, where the owner has power to give instruc-

tions. The hirer has only a qualified possession. He acquires a right of possession only for the particular period or purpose stipulated. By the Roman law, the hirer acquired no property in the thing hired. By the English law, he has only a special property during the continuance of the contract, or for the purposes expressed or implied by it. By the sale of the thing, his right of possession and his special property are both determined, and thus his possession is of quite a different character from the possession which was intended by this section, taking it as a whole.\* Accordingly, where a piano had been hired from the plaintiff with an option of purchase, and the hirer sold the piano to the defendant before he had exercised that option, it was held that the defendant was liable in *trover* to the plaintiff, although it was found that he acted in perfect good faith, the possession which was acquired by the hirer of the piano not being such a possession as was contemplated by this section.†

In England, the purchaser of a chattel takes it, as a general rule, subject to what may turn out to be informalities in the title. By a purchase in market overt the title obtained is good against all the world. If not so purchased, though purchased *bond fide*, the title obtained may not be good against the real owner. Where the original owner has parted with the chattel to A upon a *de facto* contract, though there may be circumstances which enable that owner to set aside that contract, the *bond fide* purchaser from A will obtain an indefeasible title. The question, therefore, in many such cases will be, was there a contract between the original owner and the intermediate purchaser?‡

Where goods are shipped under a bill of lading drawn in parts, to be delivered to the consignee "or his assigns, the one of which bills being accomplished, the others to stand void," the master, or the warehouseman who has the custody of the goods, is justified in delivering to the consignee, on production of one part, although there has been a prior indorsement for value to the holder of another part; provided the delivery be *bond fide* and without notice or knowledge of such prior indorsement.§

\* Greenwood & Co. v. Holquette, 20 W. R. 467; 12 B. L. R. 42.

† Ibid.

‡ Cundy v. Lindsay, L. R. 1 Q. B. D. 348; 2 Q. B. D. 96; 3 App. Cas. 459.

§ Glyn Mills & Co. v. East & West India Dock Co., L. R. 7 App. Cas. 591; 47 L. T. 309; 31 W. R. (Eng.) 201.



**412.** Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives from a person whom he knows or has reason to believe to belong, or to have belonged, to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Dishonestly receiving property stolen in the commission of a dacoity. Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

**CHARGE.**—That you, on or about the , at , dishonestly received stolen property, the possession of which you knew, or had reason to know, had been transferred by the commission of dacoity, and that you thereby committed an offence, &c.—2 W. R. Cr. L. 23, No. 352 of 1865.

A SENTENCE of transportation under ss. 412 and 59 of the Penal Code cannot exceed ten years.—*Queen v. Mohanundo Bhundary and others*, 5 W. R. 16. [Seton-Karr and Macpherson, JJ. Jan. 20, 1866.]

IT must be proved that the prisoner received or retained plundered property, knowing it to be plundered property, before he can be convicted under s. 412 of the Penal Code.—*Bishoo Manjee, Appellant*, 9 W. R. 16. [Jackson and Mitter, JJ. Feb. 12, 1868.]

THE practice of dividing the facts which constitute the parts of one offence into several minor offences condemned. A person convicted of dacoity under s. 395, Penal Code, cannot be convicted also of dishonestly receiving stolen property under s. 411, or of receiving property transferred by commission of dacoity under s. 412, when there is no evidence of the commission of more than one offence. Mode of treating the confession of prisoners as evidence in a case of receiving stolen property pointed out.—*Queen v. Shahabut Sheikh and others, Appellants*, 13 W. R. 42. [Norman, Offg. C.J., and Bayley, J. Mar. 8, 1870.]

MERELY being seen getting on board a boat with four persons, who have, on their own admissions, been convicted of belonging to a gang of dacoits, is not sufficient evidence against those so seen. To make an admission of guilty knowledge of the means by which money, supposed to have been acquired by dacoity, was obtained, evidence under s. 150 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 26 of the Evidence Act (I. of 1872), it must be shewn that the admission was antecedent to the discovery of the money.—*Queen v. Kamal Fukeer and others*, 17 W. R. 50. [Gouch, C.J., and Ainslie, J. April 15, 1872.]

A AND B were committed for trial, the former for dacoity under s. 395 of the Penal Code, and the latter under s. 412 for receiving stolen property, knowing it to be such. A made two confessions, and in both he stated he had handed over to B some pieces of gold and silver stolen at the dacoity. When B was arrested, a gold ring and a silver wristlet were found in his possession. At the trial A pleaded guilty, and B claimed to be tried. A goldsmith deposed that he had made the ring and wristlet found with B out of pieces of gold and silver given to him for the purpose by B. On this evidence and on the confessions made by A the Sessions Judge convicted B. On appeal to the High Court, *held* that A and B not having been tried jointly for the same offence, the confession of A was inadmissible as evidence against B. There was, therefore, no evidence of the identity of the goods stolen at the dacoity with those found in B's possession, and the case against him failed. Conviction quashed.—*Empress v. Balá Pátel, I. L. R.*, 5 Bom. 63. [Westropp, C.J., and Melvill, J. April 7, 1880.]

IN considering whether the possession of stolen goods raises a presumption of dishonest receipt of stolen property, the attention of the jury should be drawn to the necessity of satisfying themselves that the possession is clearly traced to the accused. The fact of stolen property being found concealed in a man's house would be sufficient to raise a presumption that he knew the property to be stolen property, but it would not be sufficient to show that it had been acquired by dacoity.—*Empress v. Malhari, I. L. R.*, 7 Bom. 731. [Melvill and Pinhey, JJ. Oct. 11, 1882.]

**413.** Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property shall be punished with transportation for life or with property.

Habitually dealing in stolen property. Ditto.

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

A PRISONER cannot be tried at the same trial for receiving or retaining (s. 411, Penal Code) and habitually receiving or dealing in (s. 413) stolen property. The proper course is to try the accused first for the offences under s. 411, and, if he is convicted, to try him under s. 413, putting in evidence the previous convictions under s. 411, and proving the finding of the rest of the property in respect of which no separate charge under s. 411 could be made or tried by reason of the provisions of s. 453 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 234 of the new Code of Criminal Procedure (Act X. of 1882).—In the Matter of the Petition of Uttom Koondoo: *Empress v. Uttom Koondoo*, I. L. R., 8 Cal. 634; 10 C. L. R. 466. [McDonell and Field, JJ. Mar. 31, 1882.]

**414.** Whoever voluntarily assists in concealing or disposing of, or making away with, property which he knows or has reason to believe to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

SEVERAL stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B therefore voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under ss. 411 and 414 of the Penal Code.—*Crim. Pro. Code* (Act X. of 1882), s. 235, ill. j.

WHERE persons are charged with assisting in concealing or disposing of property which they know or have reason to believe to be stolen, the nature of the property, as well as the circumstances under which it was being made away with, must be taken into consideration.—*Reg. v. Harishankar Fakirbhat*, 2 Bom. H. C. R. 130. [Couch and Warden, JJ. Mar. 16, 1865.]

A PRISONER, who, having received stolen property, concealed it in his house, could not be charged and convicted for two offences, *viz.*, of having dishonestly received stolen property under s. 411 of the Penal Code, and of assisting in the concealment of stolen property under s. 414, which applies to persons whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it.—*Government v. Musst. Nowlia*, 1 Agra. H. C. R. 9. [Pearson and Spankie, Offg. JJ. Aug. 1, 1866.]

WHERE the petitioner was convicted of having voluntarily assisted in concealing stolen railway-pins in a certain person's house and field with a view to having such innocent person punished as an offender, *held* that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193 of the Penal Code, and of voluntarily assisting in concealing stolen property under s. 414, Penal Code.—*Empress v. Rameshar Rai*, I. L. R., 1 All. 379. [Spankie, J. April 23, 1877.]

THE mere being in possession of stolen property dishonestly without a guilty knowledge is not a substantive offence. It is an offence under s. 411 to dishonestly receive stolen property knowing or having reason to know the same to be stolen property, or to dishonestly retain it with the like knowledge. To support a conviction of dishonestly retaining stolen property, it ought to be shown that the accused, being in innocent possession of the property, acquired the knowledge that it was stolen, and thereafter retained it dishonestly. When a person is shown to stand in such a relation to stolen property as falls short of possession by him of such property, his manner of dealing with the property may warrant a charge of assisting in concealing or disposing of or making away with the property with a guilty knowledge, that is, a charge of an offence under s. 414.—*Khona v. Empress*, Panj. Rec., No. 31 of 1879.

THE word "believe" in s. 414 is much stronger than the word "suspect," and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing was stolen property. It is not sufficient in such a case to show that the accused person was careless, or that he had reason to suspect that the property was stolen, or that he did not

make sufficient inquiry to ascertain whether it had been honestly acquired.—*Empress v. Rango Timaji*, I. L. R., 6 Bom. 402. [Melvill and Nánábhái Haridás, JJ. Dec. 21, 1880.] The following is a full report of the case:—

“This was a criminal application under the extraordinary jurisdiction of the High Court.

“On the 4th August 1880, the accused was convicted by C. Wiltshire, First-class Magistrate of Dharwar, of the offence of having voluntarily assisted in the disposal of stolen property under s. 414, and sentenced to suffer rigorous imprisonment for one year, and to pay a fine of Rs. 100, or, in default, to suffer imprisonment for six months more.

“On the 12th October 1878, a bullock was sold by one Rango, and purchased by Basalingapa, on the guarantee of the accused that it was the property of Rango. It was in evidence that the bullock belonged to one Mahārudrāpa, and that it had been stolen from him. In his examination before the Magistrate, the accused stated that he knew Rango, who had left his village some time ago during the famine, and gone to some other place to earn his livelihood; that Rango had told him (the accused) that he (Rango) had purchased the bullock for Rs. 16. From that statement of the accused the Magistrate came to the conclusion that the accused knew, or had reason to believe, the bullock to be stolen property, inasmuch as he knew Rango to be so poor that the latter was obliged to leave his village in order to earn the means of his livelihood in some other place. The Magistrate accordingly convicted the accused of the offence charged. On appeal, the conviction and sentence were upheld by the Sessions Judge (A. C. Watt) of Dharwar on the 4th September 1880.

“The accused thereupon made an application to the High Court for the exercise of its extraordinary jurisdiction.

“The High Court (Melvill and West, JJ.) sent for the record and proceedings of the case.

“On the receipt of the record and papers, the application was heard by Melvill and Nánábhái Haridás, JJ.

“*Mānekshāh Jehāngīrshāh* for the accused—There is no evidence in the case to show that the accused knew or had reason to believe that the bullock was stolen property. There were no circumstances connected with the sale of the bullock which would induce any reasonable man to believe that it had been stolen. The lower Courts were wrong in inferring, from the acquaintance of the accused with Rango and his statement in his examination, any knowledge or belief on the part of the accused that the bullock was stolen property. The facts proved in the case do not constitute the offence of which the accused has been held guilty.

“The Hon. Rao Saheb *V. N. Mandlik* (Acting Government Pleader) appeared on behalf of the Crown.

“The following is the judgment of the Court delivered by—

“Melvill, J.—It lay upon the prosecution in this case to prove that the accused person knew or had reason to believe that the bullock was stolen property. It was not sufficient to show that the accused was careless, or that he had reason to suspect that the property was stolen, or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired. The word “believe” in s. 414, Indian Penal Code, is a very much stronger word than “suspect,” and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property. The only circumstance alleged in the present case is that Rango, whose honesty the accused guaranteed, had left his village during the famine to earn livelihood elsewhere. The Court find it impossible to hold that it is a legal inference from this single circumstance that the accused had reason to believe, or, in other words, that he had sufficient reason to feel convinced, that Rango could not, during so long an interval, have acquired sufficient means to purchase a bullock of the value of Rs. 16.

“On the ground, therefore, that there is no evidence on which a conviction could legally be based, the Court reverse the conviction and sentence, and order the fine, if paid, to be refunded.”

B AND R, accused of offences under s. 414 of the Penal Code, gave information to the police which led to the discovery of the stolen property. This information was to the effect that the accused had stolen a cow and calf, and sold them to a particular person at a particular place. *Held* by the Full Bench (Mahmood, J., dissenting) that s. 27 of the Evidence Act is a proviso not only to s. 26, but also to s. 25; and that, therefore, so much of the information given by the accused to the police-officer, whether amounting to a confession or not, as related distinctly to the facts thereby discovered, might be

proved. *Empress v. Kaurpala* (Weekly Notes, 1882, p. 225) dissented from. *Per* Mahmood, J., that s. 27 of the Indian Evidence Act is not a proviso to s. 25, but only to s. 26, and that, therefore, the statements in question were wholly inadmissible in evidence. *Empress v. Pancham* (I. L. R., 4 All. 198) referred to by Straight, Offg. C.J., and Mahmood, J. *Per* Straight, Offg. C.J., that where a statement is being detailed by a constable as having been made by an accused, in consequence of which he discovered a certain fact or certain facts, the strictest precision should be enjoined on the witness, so that there may be no room for mistake or misunderstanding. Observations by Straight, Offg. C.J., as to the mode in which the testimony of witnesses should be recorded in cases where two persons are being tried. Observations by Straight, Offg. C.J., and Duthoit, J., upon the nature of confessions by accused persons in India, and the circumstances in which such confessions are made.—*Empress v. Babu Lal*, I. L. R., 6 All. 509. [Straight, Offg. C.J., and Oldfield, Brodburst, Mahmood, and Duthoit, JJ. June 30, 1884.]

### OF CHEATING.

**415.** Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes, or is likely to cause, damage or harm to that person in body, mind, reputation, or property, is said to "cheat."

*Explanation.*—A dishonest concealment of facts is a deception within the meaning of this section.

#### *Illustrations.*

(a.) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b.) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that the article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c.) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d.) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e.) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f.) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g.) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo-plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo-plant, and afterwards breaks his contract, and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h.) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i.) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage-money from Z. A cheats.

A PERSON attempted to obtain his recruitment in the police of a district by giving certain information which he knew to be false to the District Superintendent of Police. *Held* that such person had not thereby committed an offence punishable, under s. 177 or s. 188 of the Penal Code, of the offence of attempting to "cheat" within the meaning of s. 415 of that Code.—*Empress v. Dwarka Prasad*, 1 L. R., 6 All. 67. [Tyrrell, J. Sep. 25, 1884.]

✓ 416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

*Explanation*.—The offence is committed whether the individual personated is a real or imaginary person.

#### Illustrations.

(a.) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b.) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

WHERE a person represented a girl to be the daughter of one woman when she was within his knowledge the daughter of another woman, *held* that he was guilty of cheating by personation under s. 416 of the Penal Code, and that it was unnecessary to bring in s. 109 relating to abetment.—*Queen v. Dhanput Ojha*, 7 W. R. 51. [Glover, J. April 5, 1867.]

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Punishment for cheating. Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

CHARGE.—That you, on or about the \_\_\_\_\_, at \_\_\_\_\_, cheated the complainant by falsely pretending that a certain ornament was made of gold, and thereby deceived him, and dishonestly induced him to deliver to you the sum of Rs. 100 as the price of the said ornament, whereas the said ornament was not made of gold; and that you thereby committed an offence punishable under, &c.

AN indictment for cheating under ss. 415 and 420 of the Penal Code should state that the property obtained was the property of the person defrauded. But an indictment defective in this respect is defective for uncertainty, and must be objected to, if at all, before the jury is sworn.—*Reg. v. Williams*, 1 Mad. H. C. R. 31; *Ind. Jur. O. S. 94*. [Scotland, C.J., and Bittleston, J. Oct. 30, 1862.]

A PASSENGER by railway travelling in a carriage of higher class than that for which he has paid fare is not guilty of cheating under s. 417 of the Penal Code, but is indictable under the Railway Act (XVIII. of 1854).—*Reg. v. Dayábhái Parjáram*, 1 Bom. H. C. R. 140. [Couch and Tucker, JJ. Jan. 15, 1864.]

To induce a son to pay his father's debts, by acting merely on his fear of consequences to his father, is not cheating. To describe those consequences to be more serious than in fact they were likely to be, may be to deceive, but is not cheating if done without any fraudulent or dishonest intention.—*Queen v. Raj Coomar Banerjee*, W. R. Sp. 25. [Loch and Steer, JJ. April 29, 1864.]

THE prisoner having passed himself off as a police-officer, and cheated several villagers out of money, was held guilty of cheating, and falsely personating a public servant.—*Queen v. Sadanund Doss, alias Sona Biswas*, 2 W. R. 29. [Kemp, J. Jan. 30, 1865.]

A CHAUKIDAR, who obtains money from another, either by fraudulent inducement or dishonestly, or by putting that person in fear of injury, is punishable under s. 417 of the Penal Code (cheating), or ss. 383, 384 (extortion), but not for criminal misappropriation of public money entrusted to him as a public servant.—*Queen v. Ramnarain Chaukidar*, W. R. 32. [Loch and Seton-Karr, JJ. June 21, 1865.]

THE mere issue of a hukumnama (to collect statistical information) by a police-officer is no legal ground for a conviction of abetment of cheating or of extortion.—*Queen v. Meajan and another*, 4 W. R. 5. [Kemp and Seton-Karr, JJ. Sep. 9, 1865.]

IN a case of cheating, the prisoner was sentenced to six months' rigorous imprisonment and a fine of Rs. 300, two hundred of which was ordered to be paid to the prosecutor as compensation. The Sessions Judge, on appeal, confirmed the conviction. On receiving a petition from the prisoner, the High Court directed the Sessions Judge to submit the records of the case. Kemp, J., observed: "I find, on reading the evidence, that the petitioner and others held a joint-decree against the prosecutor for Rs. 194-10. Execution was sued out; the property of the prosecutor attached; and its sale was imminent, when prosecutor is said to have entered into an amicable arrangement with the petitioner, agreeing to pay Rs. 154, provided a petition was filed in Court, and the sale was stayed. The petitioner did not fulfil this promise. The sale took place, and a portion of the property was purchased by the petitioner's vakil. I hold that this is a simple breach of contract, for which the prosecutor, if so advised, has his civil remedy in a suit for damages. The prosecutor may have been led to expect that the petitioner would take measures to withdraw the execution-process, and to stay the sale; but there is no evidence whatever that, at the time the petitioner agreed to settle matters for Rs. 154, it was then his intention not to do what he led the prosecutor to expect that he would do. The main element which constitutes the offence of cheating is therefore wanting—namely, there was no intention then present to deceive, and thereby to induce the prosecutor to make conditional arrangements for an amicable adjustment of the decree. I would quash the conviction of the prisoner, and direct his release."—*Sadoo Churn Pal, Petitioner*, 4 W. R. 18. [Loch, Kemp, and Seton-Karr, JJ. Sep. 18, 1865.]

THE mere taking money one day, and dishonestly running away without paying the next day, is not necessarily cheating. There must be an intention to deceive and defraud at the time of taking the money, and the subsequent conduct of the prisoner would only be evidence to show the previous dishonest intention.—*Queen v. Heeramun Hulwaye*, 5 W. R. 5; Ind. Jur. N. S. 97. [Campbell, J. Jan. 15, 1866.]

WHERE the prisoner was convicted of cheating by inducing a man to part with his money, and contract marriage with a girl, under the false impression that she was a Brahmini, the conviction was upheld.—*Queen v. Puddomonie Boistobee*, 5 W. R. 98. [Glover, J. May 28, 1866.]

WHERE two girls were bought by the prisoners on speculation, taken to a foreign and distant district, palmed off as women [of a much higher caste than they really were, and married to two Rajputs, after receiving the usual bonus, held that the prisoners could not be convicted under s. 373 of the Penal Code, but of cheating and false personation under ss. 415 and 416.—*Queen v. Dabee Sing and others*, 7 W. R. 55. [Kemp and Seton-Karr, JJ. April 8, 1867.]

ACCUSED was found guilty of having endeavoured to evade payment of a railway-fare, by the production of an old pass, altered as to date and number of persons. Held that, although Act XVIII. of 1854 provides for the punishment of any attempt to evade payment of fare, the accused was, in the present instance, rightly convicted, not under that Act, but under the Penal Code, of an attempt to cheat, because there were distinct acts constituting cheating which accompanied such evasion.—*Crown v. Gunput, Panj. Rec.*, No. 6 of 1868.

WHERE the accused secretly entered an exhibition-building without having purchased a ticket, and was there apprehended, it was held that such act did not amount to the offence of cheating under s. 415 of the Penal Code. Such entry, when unaccompanied by any of the intents specified in s. 441 of the Penal Code, does not amount to criminal trespass or any other criminal offence.—*Reg. v. Mehervánje Bejani*, 6 Bom. H. C. R. 6. [Tucker and Warden, JJ. Feb. 11, 1869.]

THE defendant was convicted of cheating. He applied to the tahsildár for a specified quantity of land on cowle tenure free of tax for five years, and falsely represented that the land was waste-land. Held, a good conviction.—*Pro.*, Jan. 6, 1871, 6 Mad. H. C. R. 63 Ap. 12.

THE prisoners received a Government promissory note, promising to return certain jewels pledged to them, but not intending to do so; and they subsequently claimed to retain the note for another debt alleged to be due to them by the sender. Held that they were guilty of cheating.—*Queen v. Sheodurshun Dass*, 3 N. W. P. 17. [Turner and Spankie, JJ. Jan. 13, 1871.]

A PERSON hiring certain property for use at a wedding, paying a portion of the hire, and giving a written promise to pay the balance of the hire and to restore the property after the wedding, he being well aware that there was to be no wedding, and intending, when he got the property, to apply for its attachment in a civil suit in respect of an alleged claim, is guilty of cheating.—*Queen v. Kadir Bux*, 3 N. W. P. 16. [Spankie, J. Jan. 13, 1871.]

WHERE the High Court was of opinion (in a case in which no appeal lay to it) that the facts found by the Court—that tried the prisoners and the Court of appeal from such Court did not constitute the offence of cheating, of which the prisoners had been convicted, the High Court, in the exercise of its extraordinary jurisdiction, reversed the conviction and sentence. To justify a conviction for the offence of cheating there must be some evidence of an intention to cheat at the time when the promise (the omission to perform which completes the offence of cheating) is made.—*Reg. v. Hargovandas and Harkissandas*, 9 Bom. H. C. R. 448. [Gibbs and Melvill, JJ. Jan. 25, 1872.]

WHERE the accused were convicted of cheating under s. 415, Penal Code—the one of selling watered milk, and the other an inferior sort of sweetmeats—they were acquitted; the former, because the purchaser knew, and was told, the milk, was watered, and so there was no deception; and the latter on the ground that the purchaser might have tasted the sweetmeats before buying, and the sweetmeats were not composed of any material injurious to health.—*Queen v. Kalee Modock*, 18 W. R. 61. [Glover and Pontifex, JJ. Nov. 8, 1872.]

A MISREPRESENTATION by false description of one's position in life falls under the heading of cheating, and not under that of forgery. Where, therefore, a document purported to have been signed by "G. L., patwari," and it was said that it was signed by G. L., but at a time when G. L. was not a patwari, it was held that the document was not a forgery within s. 464 of the Penal Code.—*Joy Kurn Singh and others v. Man Patuok*, 21 W. R. 41. [Kemp and Ainslie, JJ. Feb. 17, 1874.]

A PERSON who purchased rice from a famine-relief officer at a certain rate (16 seers to the rupee), on condition that he should sell it at a seer the rupee less, was convicted of cheating under s. 420, Penal Code, because he did not sell it at the rate agreed on, but at 12 seers to the rupee. Held that as, within the meaning of ss. 23 and 24, Penal Code, there had been no wrongful gain or wrongful loss to any one, no offence had been committed under s. 415, Penal Code.—*Reg. v. Lal Mahomed and another*, 22 W. R. 82. [Couch, C.J., and Ainslie, J. Sep. 15, 1874.]

ACCORDING to an unreported ruling of the Bombay High Court, it was held that, where the result of cheating is the delivery of property, the offence falls under s. 420, not under s. 417.—*Reg. v. Bawaji Kalidas*, Bom. H. C. Rulings. [Sep. 25, 1875.]

THE accused purchased an agreement-stamp from a licensed vendor, representing himself to be one Hema. The vendor entered Hema's name in the register as purchaser. Held that a charge of cheating could not be sustained. *Per* Plowden, J.—Though the accused, by personating Hema, deceived the stamp-vendor, and induced him to make an incorrect entry in his register, which act was likely to cause damage to the stamp-vendor, it was not shown that the accused had any fraudulent design upon the vendor, and it was not enough if his intention was to use the stamp to the injury of Hema. *Per* Lindsay, J.—There was a deception within s. 415, but the act of selling a stamp to one personating another could not possibly cause damage to a *bona fide* vendor in any way, and the mere fact of the accused personating Hema did not induce the vendor to sell the stamp.—*Girdharee v. Crown*, Panj. Rec., No. 16 of 1876.

IN a prosecution for an attempt to cheat, under ss. 417-511 of the Penal Code, the accused was charged and convicted of having, at the central octroi-office, made false representations as to the contents of certain kuppas (skin-vessels), the object of which was to obtain a certificate entitling him to obtain a refund of octroi-duty. Prior to granting him the certificate, the octroi-officers examined the contents of the kuppas, and found that the representations of the accused regarding them were untrue. In consequence of this discovery no certificate was given to him, and he was charged and convicted as above mentioned. The procedure necessary for obtaining a refund of octroi-duty was that the central office, on satisfying itself that the articles produced were of the nature stated, would grant a certificate, which certificate would have to be indorsed by the outpost clerk when he passed the goods (on which refund was claimed) out of the town, and the owner would have to take back the certificate so indorsed to the central office, and present it to

be cashed. *Held* that, even assuming the accused to have falsely represented the contents of the kuppas as alleged, he had not completed an attempt to cheat, but had only made preparation for cheating, and that the conviction must therefore be set aside.—*Queen-Empress v. Dhundi*, 1 L. R., 8 All. 804. [Brodhurst, J. May 8, 1886.]

A PERSON who induced a farmer to ferry him over the river by promise of payment, and then refused to pay the toll, was held to be guilty of cheating under s. 417.—*Govt. v. Luchmee Narain Singh*, 2 N. A., N. W. P., Part IV., 431.

WHERE a person is charged with abetting the offence of cheating, it must be proved that the acts of the alleged abettor were intentionally done in concert with, and in furtherance of, the agents in the fraud.—*Govt. v. Girdharee*, 3 N. A., N. W. P., Part I., 47.

THE offence of cheating must, like that of extortion, be committed by the wrongful obtaining of a consent. The difference is, that the extortioner obtains the consent by intimidation, and the cheat by deception.—*Indian Law Commissioners' Report*, Note N, 112.

#### ENGLISH CASES ON CHEATING.

WHEREVER a person fraudulently represents as an *existing fact* that which is not an existing fact, and so gets money, &c., that is an offence within the Act.—*R. v. Woolley*, 1 Den. 559; 3 C. and K. 98; 19 L. J. (M. C.) 165.

WHERE a carrier, falsely pretending that he had carried certain goods to A B, demanded, and thereupon obtained from the consignor, sixteen shillings for the carriage of them, it was holden to be within the Statute.—*R. v. Coleman*, 2 East, P. C. 672. See *R. v. Airey*, 2 East, 30.

A FOREMAN represented to his master that a certain sum was due to the workmen under him, and obtained a cheque for the amount stated to be due. The amount of the cheque exceeded by seven shillings the amount really due to the workmen. The foreman paid the workmen, but kept the surplus seven shillings to himself. He was held to have been guilty of obtaining the cheque under false pretences.—*R. v. Leonard*, 1 Den. 303; 2 C. and K. 514.

THE essence of the offence of cheating is deceit. Thus, where a workman stated that he had done more work than he really had, and requested payment for the work he stated he had done, and his master, knowing that it was a false over-charge, and wishing to entrap him, paid him the amount demanded, it was held that the workman could not be indicted for obtaining money under false pretences, as it was not the falsehood which induced his master to part with the money.—*R. v. Mills, Déars. and B.* 205; 20 L. J. (M. C.) 79.

THE defendant, on entering the service of a railway company, signed a book of rules, a copy of which was given to him. One of the rules was, "No servant of the Company shall be entitled to claim payment of any wages due to him on leaving the Company's service until he shall have delivered up his

uniform clothing." On leaving the service, the defendant knowingly and fraudulently delivered up to an officer of the Company, as part of his own uniform, a great-coat belonging to a fellow-servant, and so obtained the wages due to him. It was held that he was properly convicted of obtaining by false pretences the money so paid to him as wages.—*Reg. v. Bull*, 18 Cox, 608 (C. C. R.).

WHERE the defendant falsely pretended to J N that he was entrusted by the Duke de Lauzan to take some horses from Ireland to London for him, and that he had been detained so long by contrary winds that his money was all spent, by means of which representation he induced J N to advance him money, this was holden to be within the Act.—*R. v. Villeneuve*, 2 East, P. C. 830.

So, where the defendant, who had actually taken premises, and was doing a small business in coal, obtained forty coal-bags on credit from the prosecutor by falsely pretending that he had a lot of trucks of coal at a railway-station on demurrage, and that he required forty coal-bags, this was held to be a false pretence within the Statute.—*R. v. Willot*, 12 Cox, 68 (C. C. R.).

So, where the defendants, falsely pretending that they had made a bet with A B that one of them should run ten miles within an hour, prevailed upon J N to join them in the bet, and obtained from him twenty guineas as his share in it, the judges held this to be within the Statute, notwithstanding the pretence was probably one against which common prudence might have guarded.—*Young v. R.*, 3 T. R. 98.

WHERE an attorney, who had appeared for J S, who was fined 2*l.* on a summary conviction, called on the wife of J S, and told her that he had been with J N, who was fined 2*l.* for a like offence, to Mr. B and



ENGLISH CASES ON CHEATING—*contd.*

Mr. L. and that he had prevailed on Mr. Band Mr. L. to take 1*l.* instead of 2*l.*, and that if she would give him 1*l.* he would go and do the same for her; and she thereupon gave him a sovereign, and afterwards paid him for his trouble; and it was proved that the attorney never applied to Mr. B or Mr. L respecting either of the fines, and that both were afterwards paid in full: it was held that the attorney was guilty of obtaining money by false pretences.—*R. v. Asterley*, 7 C. and P. 191.

WHEN a servant who had authority to buy goods, and was to be repaid on producing a ticket containing a statement of the purchase, produced such a ticket, and obtained the amount stated therein, no purchase having, in fact, been made, this was held to be not larceny, but obtaining money by false pretences.—*R. v. Barnes*, 2 Din. 59; 20 L. J. (M. C.), 34. And see *R. v. Prince*, 38 L. J. (M. C.) 8; L. R., 1 C. C. R. 150.

WHERE the foreman of a manufacturer, who was in the habit of receiving from his master money to pay the workmen, obtained from him, by means of false written accounts of the wages earned by the men, more than the men had earned or he had paid them, the judges held it to be within the Act; they said that all cases where the false pretence creates the credit are within the Statute; and here the defendant would not have obtained the excess above what was really due to the workmen, were it not for the false account he had delivered to his master.—*R. v. Witchell*, 2 East, P. C. 830.

It was the prisoner's duty to ascertain daily the amount of dock-dues payable by his master, and, having ascertained it, to apply to his master's cashier for the amount, and then to pay it in discharge of the dues. On one occasion, by representing falsely to the cashier that the amount was larger than it really was, as he knew, the prisoner obtained from the cashier the sum he stated it to be, and then paid the real amount due, and appropriated the difference to his own use. This was held to be not larceny, but obtaining money by false pretences. *R. v. Thompson*, L. and C. 233; 32 L. J. (M. C.) 57. It is difficult to distinguish the essential facts of this case from those in *R. v. Cooke*, L. R., 1 C. C. R. 295; 40 L. J. (M. C.) 68, where the prisoner was held to be guilty of larceny. *R. v. Thompson* was cited and observed upon in *R. v. Cooke*, although not overruled, Bovill, C.J., saying that the decision in *R. v. Thompson* went entirely on the question whether there was a larceny in the obtaining of the money in the first

instance, and that the point was not considered whether the subsequent misappropriation was larceny.

So where the defendant obtained goods by falsely stating that he wanted them for J S, who lived at N, and was a person whom he would trust with 1,000*l.*, and who went out to New Orleans twice a year to take goods to his sons, this was held to be a sufficient false pretence within the Statute.—*R. v. Archer*, Dears. 449.

So, where the false pretence alleged was, that a person who lived in a large house down the street, and had had a daughter married some time back, had been to him (the defendant) about some carpet, and had asked him to procure a piece of carpet, whereby the defendant obtained from the prosecutor twenty yards of carpet: this was held sufficient.—*R. v. Burnside*, Bell, 282; 30 L. J. (M. C.) 42.

OBTAINING as a loan, from the drawer of a bill accepted by the prisoner, and negotiated by the drawer, part of the amount, for the purpose of paying the bill, under the false pretence that the prisoner was prepared with the residue of the amount, was held to be an offence within the Statute, the prisoner being shown not to be prepared, and not intending so to apply the money.—*R. v. Crossby*, 2 M. and Rob. 17.

IN like manner, where the defendant obtained goods by a false statement that a bill, drawn on and accepted by himself, and purporting to be payable at the London and Westminster Bank, which he gave the prosecutor for the price of the goods, would be paid at the bank the next day, and that he had made arrangements for it, this was held a false pretence within the Act.—*R. v. Hughes*, 1 F. and F. 355.

WHERE the secretary of an Odd Fellows' Lodge told a member that he owed the Lodge 18*s. 6d.*, and thereby obtained that sum from him fraudulently, whereas the member owed 2*s. 2d.* only, he was held to be rightly convicted of obtaining money by false pretences.—*R. v. Woolley*, 1 Din. 559; 3 C. and K. 98; 19 L. J. (M. C.) 165.

A CREDITOR who wilfully and fraudulently represents to a third person who holds moneys of his debtor that a larger sum is due to him from the debtor than is really the case, and thus obtains from such third person payment of the larger sum, is guilty of a false pretence within the Statute, and that too although he may have obtained a judgment by default, not set aside, against his debtor for the larger sum.—*R. v. Taylor*, 15 Cox, 265, 268.

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OBTAINING money by means of false statements of the name and circumstances of the defendant or any other person, in a *begging letter*, is within the Statute.—*R. v. Jones*, 1 Den. 551; 19 L. J. (M. C.) 162.

WHERE the defendant obtained money from a woman under the threat of an action for breach of promise of marriage, he being, in fact, a married man already, an indictment, laying as the false pretence that he was entitled to maintain an action against her for the breach of promise, was held by Maule, J., to be good, for that this was a false pretence within the Statute.—*R. v. Copeland, C. and Mar.* 516.

AN indictment charging the prisoner with obtaining money from a wife whose husband had run away, by falsely pretending to her that she, the prisoner, had power to bring him back, is good, and sufficiently states an indictable offence.—*R. v. Giles, L. and C.* 502; 34 L. J. (M. C.) 50.

WHERE the defendant pretended that he was carrying on an extensive business as a surveyor and house-agent, and thereby induced the prosecutor to deposit with him 25*l.* as a security for his (the prosecutor's) fidelity as a clerk, whereas the defendant was not carrying on any business as a surveyor or house-agent, this was held to be a false pretence within the Statute.—*R. v. Crabb*, 11 Cox, 85 (C. C. R.). But where the defendant pretended (1) that he was doing a good business, and (2) that he had recently sold a good business, and thereby induced the prosecutor to deposit with him 50*l.* as a security for the prosecutor's fidelity as an assistant, whereas in truth defendant's business was worthless, and the defendant was a bankrupt, it was held that neither of the false pretences alleged came within the Statute. As to the first pretence it was a mere exaggerated representation of value upon which, though fraudulently, an indictment would not lie; and as to the second, it was too remote. *R. v. Williamson*, 11 Cox, 328, *per* Byles, J. It will be noticed that in the former of these two cases there was no existing business at all, whereas in the latter there appears to have been an existing, although a worthless, business. See also *R. v. Watson, Dears. and B.* 348; 27 L. J. (M. C.) 18, in which, although it was not necessary to decide the point, Erle, J., said: "I wish not to be supposed to assent to the proposition that an indictment [for false pretences] can be sustained by proof of mere exaggeration of the prosperity of a business, where there is an original business. It is difficult to draw a decided line; but I

think it has been decided that exaggerated praise does not render a person liable within the Statute." As to the general doctrine that exaggerated praise does not render a prisoner liable within the Statute and the limitation of that doctrine, see *R. v. Bryan* and other cases, *post*, p. 371.

WHERE the prisoner sold to the prosecutor a reversionary interest which he had previously sold to another, and the prosecutor took a regular assignment of it, with the usual covenants for title, Littledale, J., ruled that he could not be convicted for obtaining money by false pretences; for, if this were within the Statute, every breach of warranty or false assertion at the time of a bargain might be treated as such, and the party be transported. *R. v. Codrington*, 1 C. and P. 661. In *R. v. Konrick*, 5 Q. B. 49; *Dav. and M.* 208, that decision was much questioned; and it was strongly intimated that the execution of a *contract* between the same parties does not secure from punishment the obtaining of money under false pretences, in conformity with that contract. And in *R. v. Abbott*, 1 Den. 173; 2 C. and K. 630, it was decided unanimously by the Judges, upon a case reserved, that the law was so. And see also *R. v. Burgon, Dears. and B.* 11; 25 L. J. (M. C.) 105; and *R. v. Goss, Bell.* 208; 29 L. J. (M. C.) 86, in which, upon the authority of *R. v. Abbott*, the same law was laid down.

IN a recent case, *R. v. Meakin*, 11 Cox, 270 (C. C. R.), where the defendant induced the prosecutor to lend him money on a bill-of-sale of furniture, and the joint and several promissory note of the defendant and another person, by representing that the furniture was unincumbered, whereas the defendant had previously given a bill-of-sale of the same furniture to another person, although not to its full value, this was held to be an indictable false pretence. Where the indictment charged that the defendant, having in his possession a certain weight of twenty-eight pounds, falsely pretended to C that a quantity of coals which he delivered to C weighed sixteen hundred weight (meaning 1,792 pounds weight), and were worth 1*l.*, and that the weight was fifty-six pounds, by means of which he obtained a sovereign from C with intent to defraud him of part thereof, to wit, 10*s.*; whereas the coals did not weigh 1,792 pounds, and were not worth 1*l.*, and whereas the weight was not fifty-six pounds, and whereas the coals were of the weight of 896 pounds only, and were not worth more than 10*s.*, and whereas the weight was twenty-eight pounds only; the Judges (according to the report) held a conviction

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on the indictment wrong, on the ground that all the pretences, except that relating to the weight, were mere false affirmations, and that as to the weight, there was no allegation to connect the sale of the coals with the use of the weight.—*R. v. Reed*, 7 C. and P. 848. It was stated by Lord Denman, C.J., in *Hamilton v. R.*, 29 B. 271, that this case of *R. v. Reed* was misreported, and that no such decision was given; but his Lordship seems to have been mistaken in this; see *Dears. and B.* 35, note (e). But, at all events, the case of *R. v. Reed* can no longer be considered to be law since the decision in *R. v. Shirwood*, *Dears. and B.* 251; 26 L. J. (M. C.) 81. There the defendant, having contracted to sell and deliver to the prosecutrix a load of coals at 7d. per cwt., delivered to her a load of coals which he knew weighed only 14 cwt., but which he stated to her contained 18 cwt., and produced a ticket, showing 18 cwt. to be the weight, which he said he had himself made out when the coals were weighed; and she thereupon paid him the price as for 18 cwt., which was 2s. 4d. more than was really due; and it was held that the defendant was indictable for obtaining the 2s. 4d. by false pretences. This decision was approved and followed in *R. v. Lee*, L. and C. 418; 33 L. J. (M. C.) 129.

So, where the prosecutor bought of the defendant and paid him for a quantity of coal on a false representation by him that there were 15 cwt., whereas in fact there were only 8 cwt., but so packed in the cart as to have the appearance of a larger quantity, this was held to be an indictable false pretence.—*R. v. Ragg*, Bale, 214; 29 L. J. (M. C.) 86. See also *R. v. Eagleton*, *Dears.* 515; 24 L. J. (M. C.) 158.

A PERSON who obtains from a pawnbroker, upon an article which he falsely represents to be silver, a greater advance than would otherwise have been made, is guilty of a false pretence within the Statute; although the pawnbroker has the opportunity of testing the article at the time.—*R. v. Ball*, C. and Mar. 219; See *R. v. Roebuck*, *Dears. and B.* 24; 25 L. J. (M. C.) 101; *R. v. Goss*, Bell, 208; 29 L. J. (M. C.) 86.

AND a false representation that a stamp on a watch is the hall-mark of the Goldsmith's Company, and that the number 18, part thereof, indicates that it is made of eighteen carat gold, is a false pretence, and is not the less so because accompanied by the representation that the watch is a gold one, and some gold is proved to have been contained in its composition.—*R. v. Suter*, 10 Cox, 577.

BUT a false representation of what is mere matter of opinion, falling within the category of untrue praise in the course of a contract for sale, is not indictable. The defendant was convicted on an indictment for obtaining money by false pretences, the pretences charged being that certain spoons were of the best quality, that they were equal to Elkington's A (meaning spoons made by Messrs. Elkington, and stamped by them with the letter A); that the foundations were of the best material, and that they had as much silver on them as Elkington's A. The representations were made to a pawnbroker for the purpose of obtaining, and the defendant did thereby obtain, advances of money on the spoons, which were in fact of inferior quality, and were of less value than the money advanced on them, and the pawnbroker stated that he was induced by the defendant's misrepresentations alone to advance the money, and that if he had known the real quality of the spoons he would have advanced no money on them. The jury found the defendant guilty of fraudulently and falsely representing that the spoons had as much silver on them as Elkington's A, and that the foundations were of the best material, &c., and that he thereby obtained the money. It was nevertheless held, by a large majority of the Judges, that the conviction could not be sustained. *R. v. Bryan*, *Dears. and B.* 265; 26 L. J. (M. C.) 84. See also *R. v. Levine*, Cox, 374. The decision in *R. v. Bryan* is said by Erle, C.J., to have gone "upon the sound principle, that indefinite praise upon a matter of indefinite opinion cannot be made the ground of an indictment for false pretences." *R. v. Goss*, 29 L. J. (M. C.) 90; and by Byles, J., to have been governed by the maxim, *simplex commendatio non obligat*.—*R. v. Ardley*, L. R., 1 C. C. R. 306; 40 L. J. (M. C.) 88.

BUT a false representation respecting an alleged matter of definite fact knowingly made is a false pretence within the Statute, and that, too, although the representation is merely as to the quality of goods sold or pledged. Therefore, where the defendant induced the prosecutor to purchase a chain from him by fraudulently representing that it was fifteen-carat gold, when, in fact, it was only of a quality a trifle better than six carats, knowing at the time that he was falsely representing the quality of the chain as fifteen-carat gold, it was held that the statement that the chain was fifteen-carat gold, not being mere exaggerated praise, nor relating to a mere matter of opinion, but a statement as to a specific fact within the defendant's knowledge, was a sufficient false pretence to sus-

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tain an indictment for obtaining money by false pretences.—*R. v. Ardley, L. R.*, 1 C. C. R. 301; 40 L. J. (M. C.) 85.

AND where the defendants induced a purchaser to buy and pay for a cheese of a very inferior description by the wilfully false statement that a taster of a different and superior cheese produced as a sample had formed part of and been taken out of the cheese sold, it was held that he might be convicted of obtaining money by false pretences.—*R. v. Goss, Bell*, 208; 28 L. J. (M. C.) 90.

So where the defendant sold spurious blacking as "Everett's Blacking," he was held to be indictable for the false pretence.—*R. v. Dundas*, 6 Cox, 380.

WHERE the defendant falsely represented to the prosecutrix that certain packages which he sold to her contained good tea, whereas in fact each package contained a mixture of which only one-fourth part was tea, the remaining three-fourths consisting of sand and other articles unfit for food or drink, and the jury found that the defendant knew the real nature of the contents of the packages, that it was not tea, but a mixture of articles unfit for drink, and that he designedly falsely pretended that it was good tea with intent to defraud, and the defendant was convicted, it was held that the conviction was right.—*R. v. Foster, L. R.*, 2 Q. B. D. 301; 46 L. J. (M. C.) 128.

THE assistant judge of the Middlesex sessions having directed a jury that the decisions of the judges were to the effect that a mere representation of an article as gold, however small the portion of gold it contained, amounted only to an exaggeration of its quality, and would not support a criminal charge, Willes, J., said that he must except to this direction.—*R. v. Suter*, 10 Cox, 577, 578.

THE defendant and two other persons entered into articles of partnership, by the terms of which the profits were to be divided equally among them. By a subsequent verbal arrangement the defendant was to act as agent for the sale of the partnership goods, and was to receive a commission on all orders obtained by him, which commission was to be paid out of the partnership funds before any division of profits was made. The defendant, by falsely pretending that he had obtained some orders, got his partners to pay him a sum for commission. It was held that he was not indictable for false pretences, as his charges were payable out of the partnership funds, and his false statement was a misrepresentation concerning a partnership-matter, and would have to be investigated, and the sum paid duly considered, in taking the

partnership accounts, in order to ascertain the profits.—*R. v. Evans, L. and C.* 252; 32 L. J. (M. C.) 38.

IT is not necessary that the pretence should be in words; the conduct and acts of the party will be sufficient, without any verbal representation.—*R. v. Hunter, R. v. Carter*, 10 Cox, 642, 648.

THUS, if a person obtain goods from another upon giving him in payment his cheque upon a banker, with whom, in fact, he has no account, this (although not indictable as a fraud at common law, *R. v. Lara*, 6 T. R. 565: see *R. v. Flint, R. and R.* 460) is a false pretence within the meaning of the Act.—*R. v. Jackson*, 3 Camp. 370.

BUT if the defendant, at the time he gives the cheque, believes, although he has no account at the bankers, that the cheque will be paid on presentation, he cannot be convicted of a false pretence.—*R. v. Walno*, 11 Cox, 647 (C. C. R.).

THUS, where the defendant bought a mare, and paid for her on Thursday by a cheque drawn on a banker with whom he had no account, but told the prosecutor not to present the cheque until Saturday, to which the prosecutor assented, but nevertheless did present it on Thursday, when it was dishonoured, and it appeared from the evidence that the defendant was on Thursday in daily expectation of having money paid to him which would have enabled him to place the banker in funds to meet the cheque on Saturday, this was held to be no false pretence. *Id.* But a man who makes and gives a cheque for the amount of goods purchased in a ready-money transaction makes a representation that the cheque is a good and valid order for the amount inserted in it; and if such person has only a colourable account at the bank on which the cheque is drawn without available assets to meet it, and has no authority to overdraw, and knows that the cheque will be dishonoured on presentation, and intends to defraud, he may be convicted of obtaining such goods by such false pretence.—*R. v. Hazelton, L. R.*, 2 C. C. R. 134; 44 L. J. (M. C.) 11.

WHERE the prisoner was charged with falsely pretending that a post-dated cheque, drawn by himself, was a good and genuine order for 25*l.*, and of the value of 25*l.*, whereby he obtained a watch and chain; and the jury found that, before the completion of the sale and delivery of the watch by the prosecutor to the prisoner, he represented to the prosecutor that he had an account with the bankers on whom the cheque was drawn, and that he had a right

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to draw the cheque, though he postponed the date for his own convenience, all which was false; and that he represented that the cheque would be paid on or after the day of the date, but that he had no reasonable ground to believe that it would be paid, and that he had no funds to pay it; he was held to be properly convicted.—*R. v. Parker*, 2 Mood. C. C. 1; 7 C. and P. 825.

BUT when the indictment stated that the defendant falsely pretended to A B that he was a captain in the East India Company's service, and that a certain promissory note, which he then delivered to A B, was a valuable security for 21*l.*, by means of which false pretences he fraudulently obtained from A B 8*l.* 15*s.*; whereas the defendant was not a captain, &c., and the note was not a valuable security, &c.; it was holden, on error, that as it did not appear but that the note was the defendant's own promissory note, or that he *knew* it to be worthless, there was no sufficient false pretence in that respect; and, as the two pretences were to be taken together, that the indictment was bad.—*R. v. Wickham*, 10 A and E. 34; 2 Per. and D. 333; 8 L. J. (M. C.) 87. See also *R. v. Philpotts*, 1 C. and K. 112.

WHERE the prisoner passed the note of a country bank, which he knew had stopped payment, it appearing that one of the partners was solvent, Gaselee, J., held that he could not be convicted for obtaining money under false pretences.—*R. v. Spencer*, 3 C. and P. 420.

IT would seem, however, that an indictment which charged that the defendant obtained money by falsely pretending that a certain piece of paper was a bank-note then current, and of the value for which it purported to be made, would be supported by evidence that it was the note of a bank which had stopped payment and was no longer in existence, and that it had paid only a small dividend, and that these facts were known to the defendant.—*R. v. Evans*, Bell, 187; 29 L. J. (M. C.) 20. But in that case an allegation that the note was *of no value whatever* was held not to be supported by the above evidence.

WHEREAN indictment charged the defendant with obtaining money, by falsely pretending that a piece of paper was a bank-note then current, and of the full value of 5*l.*, and the evidence was that the piece of paper was the note of a bank which had stopped payment forty years before, and had not re-opened, and that the defendant knew it, this evidence was held sufficient to justify a conviction, although it appeared from the

cross-examination of a witness for the prosecution that the bank-note had been made bankrupt, and the bankruptcy proceedings were not produced, and there was no evidence as to what dividend, if any, had been paid.—*R. v. Dowey*, 37 L. J. (M. C.) 52.

WHERE a man obtained goods and money for a forged note of hand for ten shillings and six pence, the judges held it to be a false pretence within the Act.—*R. v. Freeth*, R. and R. 127.

IN another case, however, where the prisoner obtained goods by means of a forged order, Taunton, J., held that he could not be indicted for obtaining them by false pretences, but should have been indicted for forgery; *R. v. Evans*, 5 C. and P. 553; and the same was afterwards held by Parke, B., and Coltman, J., in *R. v. Anderson*, 2 M. and Rob. 471. But see now 14 and 15 Vic. c. 100, s. 12.

AND when the cashier of a bank, who had a general authority to conduct the business of the bank, and to part with its property on the presentation of a genuine order from a customer, was deceived by a forged order, and parted with the property of the bank to the person who presented the order, and who knew the order to be forged, it was held that the latter was guilty of obtaining by false pretences the money so paid on the order.—*R. v. Prince*, 38 L. J. (M. C.) 8; L. R., 1. C. C. R. 150.

FRAUDULENTLY offering a "flash-note" in payment, under the pretence that it is a bank-note, is a false pretence within the Statute.—*R. v. Coulson*, 1 Den. 592; 19 L. J. (M. C.) 182.

A PERSON who fraudulently obtains goods by forwarding to the vendor the half of a bank-note, having previously parted with the corresponding half to a third person, is guilty of obtaining goods by false pretences, as by forwarding the half-note he represents that he has the corresponding half ready for the vendor's satisfaction.—*R. v. Murphy*, 13 Cox, 293 (Irish C. C. R.).

WHERE a man assumed the name of another to whom money was required to be paid by a guanine instrument, this was holden to be a pretence within the meaning of the Act.—*R. v. Story*, R. and R. 81.

So, where a person at Oxford, who was not a member of the university, went, for the purpose of fraud, wearing a commoner's gown and cap, and obtained goods, this was held a sufficient false pretence to satisfy the Statute, though nothing passed in words.—*R. v. Barnard*, 7 C. and P. 784.

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THE pretence (as may be collected from the authorities above quoted) must be of some *existing fact*, made for the purpose of inducing the prosecutor to part with his property. Therefore, a pretence that the party *would* do an act he did not mean to do, as a pretence to pay for goods on delivery, is not a false pretence within the Act, but merely a promise for future conduct.—*R. v. Goodhall*, R. and R. 461.

So, where the defendant obtained money from the prosecutor by the false pretence that he *was going* to pay his rent, whereas he had no intention of paying his rent, this was held to be no false pretence within the Statute.—*R. v. Lee*, L. and C. 309; 9 Cox, 304.

So, also, a false pretence that the defendant wanted the loan of 30*l.* to enable him to take a public house is not within the Statute.—*R. v. Woodman*, 14 Cox, 179.

AND a pretence to a parish officer, as an excuse for not working, that the party had not clothes, when he really has, though it induced the officer to give him clothes, is not a pretence within the Statute, the statement being rather a false excuse for not working than a false pretence to obtain goods.—*R. v. Wakeling*, R. and R. 504.

AN indictment for obtaining money from A. under the false pretence that the defendant intended to marry A, and wanted the money to pay for a wedding suit he had bought, was held not sufficient to sustain a conviction.—*R. v. Johnson*, 2 Mood. C. C. 254.

AND when the false pretence averred in the indictment was, that the defendant having executed certain work, there was a certain sum due and owing to him on account of it, whereas only a smaller sum was due to him, this was held bad, as not sufficiently averring a false pretence of an existing fact, and being proveable by evidence of a mere wrongful overcharge.—*R. v. Oates*, Dears. 459; 24 L. J. (M. C.) 123.

WHERE an indictment alleged that the defendant falsely pretended to P, who lived at one T's, that the said P was to give the defendant 10*s.*, and that T was going to allow him 10*s.* a week, it was held (*Blackburn, J.*, and *Pigott, B.*, *dub.*) that the indictment did not allege with sufficient certainty any false pretence respecting any existing fact.—*R. v. Henshaw*, L. and C. 444; 33 L. J. (M. C.) 132.

BUT where the statement consists partly of a fraudulent misrepresentation of an existing fact, and partly of an executory promise

to do something *in futuro*—as, that the defendant kept a shop, and that the prosecutrix might go and live with her at the said shop until she obtained a situation; whereas the defendant kept no shop; and the jury find that the prosecutrix parts with her money or goods, relying wholly or in part upon the misrepresentation of fact; this is a sufficient false pretence within the Act.—*R. v. Fry*, Dears. and B. 449; 27 L. J. (M. C.) 68.

So, where the false representation was that the defendant *had* bought certain skins, and *would* sell them to the prosecutor.—*R. v. West*, Dears. and B. 575; 27 L. J. (M. C.) 227.

AND when a married man induced a woman to give him money by representing himself to be unmarried, and by promising that with the money he would furnish a house and return and marry her, he was held indictable for obtaining money by false pretences.—*R. v. Jennison*, L. and C. 157; 31 L. J. (M. C.) 146.

It is also to be observed that a promise to do a thing *in futuro* may involve a false pretence that the promisor has the power to do that thing, for which false pretence the promisor may be indictable.—*R. v. Giles*, L. and C. 502; 34 L. J. (M. C.) 50.

AND where the false pretence charged was that the defendant said he had got a carriage and pair, and expected it down, either that day or the next, this was held to be proved by evidence of his having said that he expected his carriage and pair down.—*R. v. Howarth*, 11 Cox, 588 (C. C. R.).

WHERE money was obtained by the defendant by the false representation that W was about to publish a new directory, and that the defendant was collecting information for it, this was held to be a false pretence of an existing fact.—*R. v. Speed*, 15 Cox, 24 (C. C. R.). Indeed, it may be laid down generally that, as it is not necessary that the statement of the existing facts should be in words, but may be conveyed by the conduct and acts of the party, so also, if made by words or writing, it is not necessary that such statement should be made expressly, if the statement may be naturally and reasonably, although not necessarily, inferred from such words or writing.—*R. v. Cooper*, L. R. 2 Q. B. D. 510; 46 L. J. (M. C.) 219. Thus, where C was convicted of obtaining potatoes from the prosecutor by falsely pretending that he was then in a large way of business, that he was in a position to do a good trade in potatoes, and that he was able to pay for large quantities of

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potatoes as and when the same might be delivered to him, and the evidence that C had so pretended was the following letter written by him to the prosecutor: "Send me one truck of regents and one truck of rocks, as samples, at your prices named in your letter; let them be good quality, then I am sure a good trade will be done for both of us. I will remit you cash on arrival of goods and invoice. I may say if you use me well I shall be a good customer." It was held, affirming the conviction, that the words of the letter were fairly and reasonably capable of a construction supporting the pretences charged, and that it was a question for the jury whether the writer intended the prosecutor to put that construction upon them.—*Id.*

A FALSE pretence actually made to A in B's hearing, whereby money is obtained from B, may be laid as made to B.—*R. v. Dent*, 1 C. and K. 249.

AND where the indictment alleged the false pretence to have been made to B and others, and it was proved that B was one of a firm, and that the false pretence was made to him alone, but with intent to defraud the firm, it was held sufficient, the words "and others" being rejected as surplusage.—*R. v. Kenley*, 2 Den. 68; 20 L. J. (M. C.) 57. The jury may connect together representations made in several distinct conversations (supposing them to be in their nature connectible), and convict the defendant for obtaining money, &c., by means of false pretences made in those several conversations.—*R. v. Wellman*, Dears. 188; 22 L. J. (M. C.) 118.

A FALSE pretence made through an innocent agent is the same as if made by the defendant himself, and may be so charged.—*R. v. Butcher*, Bell, 6; 28 L. J. (M. C.) 14.

K REPRESENTED to B that he had a quality of good tobacco, and induced B to agree to buy some. P was with K at the time, and it was arranged that P was to deliver the tobacco to B, and that B was to pay P for K. P afterwards delivered to B two bales purporting to be tobacco, as in pursuance of the contract, and received payment from B. The bales contained little else but rubbish; K and P were parties to the fraud. It was held on these facts that K was liable to be convicted on an indictment charging him with obtaining money from B by falsely pretending that he was possessed of a quantity of good tobacco.—*R. v. Korrigan*, L. and C. 383; 33 L. J. (M. C.) 71.

WHERE the indictment charged the defendant with falsely pretending to the prose-

cutor, whose mare and gelding had strayed, that he would tell him where they were, if he would give him a sovereign down; and the prosecutor gave the sovereign, but the defendant refused to tell, the conviction was held bad; the indictment should have stated that he pretended he *knew* where they were.—*R. v. Douglas*, 1 Mood. C. C. 462.

AN indictment against A and B charged that C was possessed of a mare and A of a horse, and that A and B falsely pretended to C that B was then and there possessed of a certain sum of money, to wit, 12*l.*, and that if C would exchange his mare for A's horse, B was willing and ready to purchase the horse of C, and give him 12*l.* for it; whereas, in truth and in fact, B was not then and there possessed of the said sum of 12*l.*, and was not then and there ready and willing to purchase the said horse of C and to pay him the 12*l.*; and it was held bad, on demurrer, for not averring that the defendant *knew* that B was not possessed of the 12*l.*—*R. v. Henderson*, 2 Mood. C. C. 192; C. and Mar. 328. But as the word "knowingly" is not in the Statute, an indictment which does not contain that word, but follows the words of the Statute, is sufficient after verdict.—*R. v. Bowen*, 13 Q. B. 790; 19 L. J. (M. C.) 65. See *Hamilton v. R.*, 9 Q. B. 271; 16 L. J. (M. C.) 9.

THE indictment also must negative the pretences by special averment as in the above precedent; and where such an averment was omitted, it was holden to be an error, and the judgment was reversed.—*R. v. Perrott*, 2 M. and Sel. 379, 386.

WHERE the false pretence alleged was, that the defendant "*then* was a captain in Her Majesty's fifth regiment," &c., the pretence was held to be well negated by an averment that the defendant was not, "at the time of making such practice," a captain, &c.—*Hamilton v. R.*, 9 Q. B. 271.

IT was also holden, in cases decided on former Statutes, that the indictment should state that the money, &c., obtained was the property of the person whom it was intended to defraud; since otherwise a conviction or acquittal on this indictment could not be pleaded in bar to a subsequent indictment for larceny in respect of the same transaction.—*Sile v. R.*, Dears. 132; 1 E and B. 533; 22 L. J. (M. C.) 41. But this allegation is expressly declared to be unnecessary by the present Statute 24 and 25 Vic. c. 96, s. 88. It is not necessary to allege that the pretence was made *with the intent* of obtaining the money, &c.; it is sufficient to show that the pretence was made, that the

ENGLISH CASES ON CHEATING—*contd.*

money, &c., was obtained thereby, with intent to defraud, and that the practice was false to the knowledge of the defendant.—*Hamilton v. R.*, 9 Q. B. 271. It is still, however, necessary to allege in the indictment that the defendant obtained the money, &c., "with intent to defraud," and if those words be omitted, the indictment is bad, and cannot be amended under 14 and 15 Vic. c. 100, s. 1, by inserting them.—*R. v. James*, 12 Cox, 127, *per* Lush, J. If it be a valuable security that was obtained, the indictment need not, it seems, show it to be still unsatisfied; at all events, it is good after verdict without such averment.—*Id.* The offence is completed by the obtaining of the money, &c., and it is no defence, where the indictment charges the obtaining of money, that the money has been obtained only by way of a loan, and that the defendant intends to repay it; *R. v. Crossley*, 2 M. and Rob. 17; because the property in money that is lent passes as much in a case of loan as on a sale, there being no expectation that the same money which is lent will be returned. See the judgment of Crompton, J., in *R. v. Burgon*, Dears and B. 11.

WHERE, however, a *chattel* is obtained by way of loan, the property in the chattel does not pass (see the judgment of Crompton, J.,

*supra*), and since to constitute an obtaining by false pretence it is equally essential, as in larceny, that there shall be an intention to deprive the owner wholly of his property, if it appears that the defendant had no such intention, but merely intended to obtain the use of the chattel for a limited time, he cannot be convicted of obtaining the chattel by false pretences.—*R. v. Kilham*, L. R., 1 C. C. R. 261; 39 L. J. (M. C.) 109.

AND therefore, where the defendant, by false pretences, obtained from a livery-stable-keeper a horse on hire, rode it himself during the time of hiring, and afterwards returned it to the stables, it was held that he could not be convicted of obtaining the horse by false pretence.—*Id.* See *R. v. Boulton*, 1 Den. 508; 2 C. and K. 917, 919; 19 L. J. (M. C.) 67.

WE have seen that the offence is completed by the obtaining of the money; and, therefore, where it was transmitted in a letter, posted by the defendant's request in county A, but which reached him in county B, it was held that this was an obtaining of the money in county A, and that the venue was rightly laid there.—*R. v. Jones*, 1 Den. 551; 19 L. J. (M. C.) 162. See *R. v. Buttery*, cit. 4 B. and Ald. 179.

**418.** Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound, either by law or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend three years, or with fine, or with both.

**419.** Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

A WITNESS falsely deposing in another's name should be charged with giving false evidence under s. 193, and not with cheating by personation under ss. 415 and 419 of the Penal Code.—*Reg. v. Premá Bhiká*, 1 Bom. H. C. R. 89. [Forbes, Westropp, and Tucker, JJ. Nov. 5, 1863.]

A MAN, named Yesu, gave the accused four annas with which to purchase for him (Yesu) a stamp. When the stamp-collector asked the accused for his name, he said "Yesu," instead of giving his own name. It was held that this was furnishing false information under s. 177, not cheating by personation under s. 419.—*Reg. v. Raghoji bin Kanoji*, 3 Bom. H. C. R. 42. [Couch, C.J., and Newton, J. Mar. 6, 1867.]

WHERE a person represented a girl to be the daughter of one woman when she was within his knowledge the daughter of another woman, held that he was guilty of cheating by personation under s. 416 of the Penal Code, and that it was unnecessary to bring in s. 109 relating to abetment.—*Queen v. Dhanput Ojha*, 7 W. R. 51. [Glover, J. April 5, 1867.]

WHERE two girls were brought by the prisoners on speculation, taken to a foreign and distant district, palmed off as women of much higher caste than they really were, and married to two Rajputs after receiving the usual bonus, held that the prisoners could not



be convicted under s. 373 of the Penal Code, but of cheating and false personation under ss. 415 and 416.—*Queen v. Daboo Singh and others*, 7 W. R. 55; 3 Wyman's Rev., Civ., and Crim. Rep. 32. [Kemp and Seton-Karr, J.J. April 8, 1867.]

WHERE A intended to register a deed, but was too ill to do so, and B, who was known to A, personated A, and had the deed registered in her name, it was held that, in the absence of any thing to prove that it was intended to defraud any body, A was not guilty of cheating by personation under s. 419 of the Penal Code, but an offence under s. 93 of the Registration Act (XX. of 1866). C and D, who abetted A, were convicted of an offence under s. 94 of the said Act.—*Revision of Proceedings in the Case of Loothy Bawa and others*, 11 W. R. 24; 2 B. L. R. A. Cr. 25. [Norman and Jackson, J.J. Mar. 31, 1869.]

WHERE the accused represented to the prosecutor that a girl was a Brahmin, and thereby induced him to part with his money in consideration of the marriage of the girl to his brother, when the girl was really of the Sudra caste, it was held that he was guilty of cheating by false personation under s. 416.—*Queen v. Mohim Chunder Sil*, 16 W. R. 42. [Ainslie, J. Sep. 2, 1871.]

WHERE the accused enlisted in the police, calling himself a Jât, got an appointment, and drew pay as a Government servant, whereas he was in really an Ahir, a caste whose enlistment was prohibited, which fact was well known to the accused, held that the Magistrate rightly held that the offence of cheating by personation had not been committed. *See*, that the accused might have been convicted under s. 182.—*Empress v. Buddhu, Papi*, Rec., No. 24 of 1880.

THE prisoner, having passed himself off as a police-officer, and cheated several villagers out of money, was held guilty of cheating and falsely personating a public servant.—*Queen v. Sadanund Doss alias Sona Biswas*, 2 W. R. 29. [Kemp, J. Jan. 30, 1885.]

**420.** Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

A CONTRACTOR in the Public Works Department, who was charged with cheating in respect of a sum of money which he received on account for work which it was alleged he had not then finished, was acquitted on the evidence, because it was not proved (1) that there was a false pretence made use of by accused; (2) that he knew he was making use of a false pretence, or that he intended to defraud; (3) that the Public Works Department were deceived by the pretence on account of their belief in its truth; and (4) that the accused received the money with the intention of causing wrongful loss to the Government.—*Queen v. Kalipuddo Porumanick*, 23 W. R. 43. [Kemp and Birch, J.J. Mar. 2, 1865.]

A PERSON who purchased rice from a famine-relief officer at a certain rate (16 seers to the rupee), on condition that he should sell it at a seer the rupee less, was convicted of cheating under s. 420 of the Penal Code, because he did not sell it at the rate agreed on, but at 12 seers to the rupee. Held that, as within the meaning of ss. 23 and 24 of the Penal Code, there had been no wrongful gain or wrongful loss to any one, no offence had been committed under s. 415 of the Penal Code.—*Queen v. Lal Mahomed and another*, 22 W. R. 82. [Couch, C.J., and Ainslie, J. Sep. 15, 1874.]

#### OF FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY.

**421.** Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers, or causes to be transferred, to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby

Dishonest, or fraudulent removal or concealment of property to prevent distribution among creditors.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Not comp.

prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

**422.** Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available according to law for payment of his debts or the debts of such other person shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

WHERE A entered into an agreement with B not to compromise a case with C, because he had assigned the benefit of the suit to B as a security for the due payment of some monthly instalments of money, and A notwithstanding did afterwards compromise the suit with C, it was held that A could not be convicted under s. 422 of the Penal Code, unless the compromise with C was made dishonestly or fraudulently towards B.—Nobin Chunder Mudduck, Petitioner, 22 W. R. 46. [Phear and Morris, JJ. July 29, 1874.]

Ditto.

**423.** Whoever dishonestly or fraudulently signs, executes, or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge, or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ditto.

**424.** Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

WHERE a Deputy Magistrate, considering that the attachment of a carriage in execution of a decree of a Civil Court was illegal, because it was placed in the custody of the judgment-debtor's husband, and that the husband had acted fraudulently in recovering and concealing the wheels and axles of the carriage on its subsequent distraint for arrears of municipal tax, convicted him of an offence under s. 424 of the Penal Code, the conviction was set aside. A Deputy Magistrate has no authority to order arrears of municipal tax due by a person to be paid out of a fine levied on him.—Queen v. Broja Kishore Dutt, 8 W. R. 17. [Jackson and Hobhouse, JJ. June 17, 1867.]

To sustain a charge of concealment of property under s. 424, there must be evidence of the persons intended to be defrauded by such concealment.—Crown v. Ram Dwaya, Panj. Rec., No. 16 of 1868.

THE offence which s. 424 of the Penal Code contemplates is such a concealment or removal of property from the place where the property is deposited as can be considered fraudulent, whether the fraud is intended to be practised on creditors or partners. Case of Kiamuddin v. Allah Buksh (15 W. R. 51) distinguished.—Gour Benode Dutt and another, Petitioners, 21 W. R. 10; 13 B. L. R. 308n. [Markby and Birch, JJ. Dec. 4, 1873.]

IN matters relating to the grant of sanction to prosecute under s. 195 of the Criminal Procedure Code (Act X. of 1882), a Court is regarded as "subordinate" to another Court where the latter is the Court to which an appeal from the former *ordinarily* lies,

and an application for such sanction must be made to such superior Court even in those particular cases in which an appeal lies to some other Court, *e. g.* to the High Court. A decree-holder applied to the First-class Subordinate Judge for sanction to prosecute his judgment-debtor, under ss. 206 and 424 of the Penal Code, for fraudulent concealment of certain moveable property, worth about Rs. 10,000, awarded by the decree. This application was rejected by the Subordinate Judge. The District Judge declined to interfere, on the ground that the decree being appealable to the High Court, the High Court alone could deal with the application under s. 195 of the Criminal Procedure Code. *Held* that, though the decree in the present instance was appealable to the High Court, still as appeals from the Court of the First-class Subordinate Judge ordinarily lay to the District Court, the former was subordinate to the latter Court within the meaning of s. 195 of the Criminal Procedure Code.—*In re Anant Ramchandra Lotlikar, I. L. R., 11 Bom. 438.* [West and Birdwood, JJ. Nov. 16, 1886.]

### OF MISCHIEF.

**425.** Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief."

*Mischief.*

*Explanation 1.*—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

*Explanation 2.*—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

### Illustrations.

(a.) A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z. A has committed mischief.

(b.) A introduces water into an ice-house belonging to Z, and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c.) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d.) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(e.) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(f.) A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(g.) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

(h.) A causes cattle to enter upon a field belonging to Z, intending to cause, and knowing that he is likely to cause, damage to Z's crop. A has committed mischief.

Any Mag.

Unconv.

Summons.

Bailable.

Comp. when

the only loss

or damage

caused is loss

or damage to

a private

person.

**426.** Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Punishment for committing mischief.

THE prisoners had cleared a piece of Government land, cutting down without permission and appropriating the trees thereon, and were convicted of theft under s. 379, and of mischief under s. 425, and sentenced, the first prisoner to one month's imprisonment and a fine of Rs. 40, and the second prisoner to pay a fine of Rs. 10. *Held* that the convictions and sentences were not illegal, as the mischief preceded the theft, which could not have been committed till the trees were severed from the ground.—Reg. v. Narayan Krishna and others, 2 Bom. H. C. R. 392. [Couch, C.J., and Newton, J. June 27, 1866.]

WHERE a person levelled, filled up, and cultivated a watercourse over his own lands, which conveyed water to the land of the prosecutor, it was held that this act was mischief within the meaning of s. 425, if the defendant knew that the prosecutor was entitled to the water, and that by this act his right would be obstructed. The authority vested in the Criminal Court of punishing persons for acts of mischief is one which must be exercised with great caution, and it must be very clear, before conviction, that the accused has brought himself within the meaning of s. 425.—Ram Golan Singh, Petitioner, 6 W. R. 59; Wyman's Rev., Civ., and Crim. Rep. 47. [Löb and Jackson, JJ. Aug. 27, 1866.]

STEALING property, and then destroying it, are but one offence, *viz.*, theft—not two, theft and mischief; but the fact that the offender has rendered the property irrecoverable should be considered in awarding punishment.—Crown v. Hamira, Panj. Rec.; No. 37 of 1866.

A COURT-COPYIST obtained the file of a case from the record-officer by pretending that a copy of the decree was required. He afterwards returned the file, having abstracted and destroyed a receipt given by the decree-holder for the money paid by the defendant in satisfaction of decree. *Held* that he was guilty of mischief.—Crown v. Tahul Ram, Panj. Rec., No. 112 of 1866.

S. 425 of the Penal Code supposes that the destruction was caused with the intention to cause wrongful loss or damage, and does not apply to cases of mere carelessness; and s. 17, Act III. of 1857, supposes the mischief (cattle-trespass) was done intentionally, and not by negligence.—Reference in the Case of Araz Sircar, 10 W. R. 29. [Loch and Glover, JJ. Aug. 21, 1868.]

To constitute the offence of mischief according to the Penal Code, the act done must be shown to have caused destruction of some property, or such a change in the property or the situation of it as destroys or diminishes its value or utility, or affects it injuriously. The probable consequential damage to other property would not of itself constitute mischief.—Pro., Oct. 22, 1863, 4 Mad. H. C. R. Ap. 15.

A RIGHT of fishery was in dispute between the zamindár of Bali and the zamindár of Moharâjpur. The former obtained a decree declaring the fishery to be his, in proceedings in which the latter was not a party. Thereupon the servants of the zamindár of Bali removed a bamboo-bar which the Moharâjpur people had erected to prevent the passage of fish. For this removal the Bali people were convicted of mischief, and fined. On a reference to the High Court it was held that the conviction could not stand, as the Moharâjpur zamindár had not shown that he was legally entitled to the fishery in dispute, and it did not appear that the defendants were acting otherwise than under a *bonâ-fide* belief that the Moharâjpur people were encroaching on their master's rights. In so removing a bar which interfered with those rights, it could not be said that they acted with intent to cause, or knowing it to be likely that they would cause, wrongful loss to the opposing party.—Queen v. Denoo Buidhob Biswas and others, 12 W. R. 1; 3 B. L. R. A. Cr. 17. [Norman and Jackson, JJ. June 1, 1869.]

THE defendants were convicted of mischief under s. 427 of the Penal Code for grazing their cattle upon waste lands without payment of certain capitation-fees to which the prosecutor was entitled. *Held* that there was no evidence that the defendants caused mischief.—Pro., July 22, 1870, 5 Mad. H. C. R. Ap. 29.

To render a person liable under s. 425 of the Penal Code for mischief in consequence of damage done by cattle-trespass, he must in some way have caused the cattle to enter the prosecutor's fields, knowing that by so doing he is likely to cause damage. Mere neglect to keep the cattle from straying is not sufficient.—Forbes (Major) v. Grish Chunder Bhutacharjee, 14 W. R. 31; 6 B. L. R. Ap. 3. [Couch, C.J., and Jackson, J. Aug. 12, 1870.]

THE accused were convicted of mischief. The facts were that, whilst the accused were employed in floating timber through a bridge, some of the logs struck against the arch of the bridge. *Held* that the conviction was bad.—Pro., Nov. 4, 1870, 5 Mad. H. C. R. Ap. 40.

THE mere fact of allowing cattle to stray, whereby damage is caused to the complainant, affords no evidence to support a conviction on the charge of mischief.—*Pro.*, Nov. 10, 1871, 6 Mad. H. C. R. Ap. 36.

WITHOUT evidence that the accused intended, or knew that he was likely, to cause wrongful loss or damage to the complainant, the offence of mischief under s. 425 of the Penal Code was held not made out.—*Kashi Nath Ghose and others v. Dinoburdhoo Mytee*, 16 W. R. 62. [Kemp and Jackson, JJ. Dec. 2, 1871.]

A CONVICTION for mischief was quashed in a case where it appeared that the complainant had formerly destroyed crop belonging to the accused, and the latter, instead of complaining at once, merely bided his time, and then took the complainant's crop.—*Mahomed Foyaz v. Khan Mahomed*, 18 W. R. 10. [Kemp and Glover, JJ. June 7, 1872.]

A DOUBLE sentence for theft and mischief is illegal and improper.—*Bichuk Aheer v. Auhuck Bhooonea*, 6 W. R. 5. [Jackson and Campbell, JJ. June 18, 1873.]

IN a case in which the accused was charged with having cut and carried away bamboos, the right to which was disputed, it was held that he could not be convicted of mischief under s. 427 of the Penal Code.—*Shakur Mahomed v. Ghunder Mohun Shah*, 21 W. R. 38. [Kemp and Glover, JJ. Jan. 28, 1874.]

DEFENDANTS were convicted of committing mischief under the following circumstances. During certain seasons of the year they received water through a certain sluice for the irrigation of their lands. At another season the sluice was closed, and the water allowed to flow to the lands of other cultivators. The arrangement was prescribed by the Revenue Authorities, and the defendants violated it by opening their sluice during the seasons prescribed for the irrigation of the lands of the other cultivators. Held by the High Court that the conviction could not be sustained: that there had been no destruction of property, or diminution in the value or utility of property, by defendants within the definition in s. 425 of the Penal Code.—*Pro.*, Nov. 12, 1874, 7 Mad. H. C. R. Ap. 39.

A PERSON commits mischief if he cuts trees on land which he claims, but of which possession after an execution-sale has been legally made over to another person, without any objection or formal intervention on his part.—*Sonni Sardar v. Bukhtar Sardar*, 25 W. R. 46. [Kemp and Glover, JJ. May 12, 1876.]

WHERE an accused person had, at the instance of the Magistrate who had come across him while out walking one morning, been placed on his defence for mischief, and summarily tried and sentenced to two months' rigorous imprisonment; and the Magistrate had, by a letter to the Registrar of the High Court, furnished the explanation that the accused had, while extending a garden, and laying the foundation of a house, encroached on the inner slope of a river-embankment, and thereby endangered the safety of the whole station, held, firstly, that in order to justify a conviction for the offence of mischief, it must appear that the accused person had done a particular act with intent to cause, or knowing it to be likely to cause, wrongful loss; and that as the house and garden on which the accused was engaged would be the first to be swept away in the event of the dreaded breach in the bund and consequent irruption of the river, such guilty knowledge or intent could not reasonably be inferred on his part; and, secondly, that in a case of this kind, where Government had been made prosecutor, but no complaint had been offered to the Magistrate, who had acted on his own impulse, the Magistrate had erred seriously in dealing with the case summarily, and sentencing off the accused to imprisonment.—*Prian Nath Shaha and Romanath Banerjee, Petitioners*, 25 W. R. 69. [Jackson and McDonell, JJ. June 6, 1876.]

THE accused, A, C, and another, members of the Municipal Committee of Jalapur, permitted a tree within municipal limits to be cut for a public purpose, against the order of the Municipal Committee as a body. Held that accused had not committed the offence of mischief as defined in s. 425.—*Amir Chand v. Crown*, Panj. Rec., No. 9 of 1878.

IF a person enters on land in the possession of another in the exercise of a *bond-fide* claim of right, and without any intention to intimidate, insult, or annoy such other person, or to commit an offence, then, though he may have no right to the land, he cannot be convicted of criminal trespass. So also, if a person deals injuriously with property in the *bond fide* belief that it is his own, he cannot be convicted of mischief. The mere assertion, however, in such cases of a claim of right is not in itself a sufficient answer to charges of criminal trespass and mischief. It is the duty of the Criminal Court to determine what was the intention of the alleged offender, and if it arrives at the conclusion that he was not acting in the exercise of a *bond-fide* claim of right, then it cannot refuse to convict the offender, assuming that the other facts are established which constitute the

offence. Where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief, *held* that such person could not, under cl. 3 of s. 454 of Act X. of 1872 (corresponding with s. 235 of Act X. of 1882), receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not in such a case prohibit the Court from passing sentence in respect of each offence established.—*Empress v. Budh Singh*, I. L. R., 2 All. 101. [Turner, J. Jan. 24, 1879.]

THE destruction of a document evidencing an agreement void for immorality may constitute the offence of mischief within the meaning of s. 426 of the Penal Code.—*Reg. v. Vyápurí*, I. L. R., 5 Mad. 401. [Kernan and Muttusámi Ayyár, JJ. July 11, 1882.]

THE owner of an animal who buries it after its death is not guilty of mischief or any other offence, although he does so with the express object of preventing the Máhárs of the village from taking its skin according to the custom of the country.—*Queen-Empress v. Govinda Punja*, I. L. R., 8 Bom. 295. [West and Nánábhái Haridás, JJ. Jan. 31, 1884.]

WHERE complainant had, for the purpose of removal, placed certain goods upon a cart, and accused came and unyoked the bullocks, and turned the goods off the cart on to the road, and complainant thereupon went away at once, leaving them there, *held* that, under these circumstances, a conviction under s. 341 of the Penal Code could not be sustained; but that there was such "mischief" as to bring the offence within s. 425. *Held* also that s. 425 does not necessarily contemplate damage of a destructive character. It requires merely that there should be an invasion of right and diminution of the value of one's property, caused by that invasion of right, which must have been contemplated by the doer of it when he did it.—In the Matter of the Petition of Juggeshwar Dass; *Juggeshwar Dass v. Koylash Chunder Chatterjee*, I. L. R., 12 Cal. 55. [Garth, C.J., and Prinsep, Wilson, Field, and O'Kinealy, JJ. Sep. 4, 1885.]

THE damage contemplated in s. 425 of the Penal Code need not necessarily consist in the infringement of an existing, present, and complete right, but it may be caused by an act done *now* with the intention of defeating and rendering infructuous a right *about to come into existence*. Any person who contracts to purchase property, and pays in a portion of the purchase-money, has such an interest in that property, although his title may not be complete, or his right final and conclusive, that the destruction of such property may cause to him wrongful loss or damage within the meaning of s. 425.—*Dharma Das Ghose v. Nusserudin*, I. L. R., 12 Cal. 660. [Wilson and Porter, JJ. April 14, 1886.]

#### 427. Whoever commits mischief, and thereby causes loss or damage to

Committing mischief, and thereby causing damage to the amount of fifty rupees.

the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

HOUSE-TRESPASS and mischief not being separate offences, but being included in the graver offence of being members of an unlawful assembly armed with deadly weapons, no separate convictions and sentences were deemed to be requisite.—*Queen v. Surroop Napit* and others, 3 W. R. 54. [Kemp and Seton-Karr, JJ. July 15, 1865.]

THE defendants were convicted of mischief, under s. 427 of the Penal Code, for grazing their cattle upon waste lands without payment of certain capitation-fees to which the prosecutor was entitled. *Held* that there was no evidence that the defendants caused mischief.—*Pro.*, July 22, 1870, 5 Mad. H. C. R. Ap. 29.

THE mere fact of allowing cattle to stray, whereby damage is caused to the complainant, affords no evidence to support a conviction on the charge of mischief.—*Pro.*, Nov. 10, 1871, 6 Mad. H. C. R. Ap. 37.

#### 428. Whoever commits mischief by killing, poisoning, maiming, or ren-

Mischief by killing or maiming any animal of the value of ten rupees.

dering useless, any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Presy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Comp. when the only loss or damage caused is loss or damage to a private person.

Presy. Mag. or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Nto comp.

**429.** Whoever commits mischief by killing, poisoning, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by killing or maiming cattle, &c., or any animal of the value of fifty rupees.

Of. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Bailable. Not comp.

SEPARATE convictions and sentences under ss. 429 and 379, and under ss. 457 and 380 of the Penal Code, were set aside, and the convictions under s. 429 in the former case, and under s. 457 in the latter, allowed to stand.—*Queen v. Sahrae and others*, 8 W. R. 31. [Jackson and Hobhouse, JJ. July 1, 1867.]

**430.** Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, a diminution of the supply of water for agricultural purposes, or for food or drink for human beings, or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation or by wrongfully diverting water.

HELD by the majority of a Full Bench (Innes, J., dissenting) that it is not part of the definition of the offence of causing a diminution of water-supply for agricultural purposes that the act of the accused should be a mere wanton act of waste. It is sufficient that the act is done without any show of right.—*Ramakrishna Chetti v. Palaniyandi Kudambar*, I. L. R., 1 Mad. 262. [Nurzan, C.J., and Holloway, Innes, Kernan, and Kindersley, JJ. Nov. 24, 1876.]

WHERE, upon the evidence, it appeared that the complainant was the exclusive owner of a water-course, and that the accused had no sort of right to assert any claim to it, the causing of a diminution of the supply of water by the accused, even though in the assertion of a right, was held to be only an additional wrong, and to constitute mischief within the meaning of s. 430 of the Penal Code, *Rām Krishna Chetti v. Palaniyandi Kudambar* (I. L. R., 1 Mad. 262) followed.—*Queen-Empress v. Jaggannath Bhikaji Bhāve*, I. L. R., 10 Bom. 183. [Birdwood and Wedderburn, JJ. Oct. 29, 1885.]

**431.** Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to public road, bridge, or river.

**432.** Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by causing inundation or obstruction to public drainage attended with damage.

**433.** Whoever commits mischief by destroying or moving any light-house or other light used as a sea-mark, or any sea-mark or buoy or other thing placed as a guide for navigators, or by any act which renders any such light-house, sea-mark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying or moving or rendering less useful a light-house or sea-mark.

Of. of Ses. Cognizable. Warrant. Not bailable. Not comp.

Presy. Mag.,  
or Mag. of 1st  
or 2nd class.  
Uncoog.  
Warrant.  
Bailable.  
Not comp.

**434.** Whoever commits mischief by destroying or moving any land-mark fixed by the authority of a public servant, or by any act which renders such land-mark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Ct. of Ses.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

**435.** Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, "or (where the property is agricultural produce) ten rupees or upwards,"\* shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 435 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

Ct. of Ses.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

**436.** Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship, or as a human dwelling, or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 436 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

IN a case of mischief by fire with intent to cause the destruction of a dwelling-house, the charge should lay the intent as an intent to cause the destruction, not of a house simply, but of a house used as a human dwelling.—Queen v. Durbaroo Polie, 8 W. R. 30. [Hobhouse, J. June 29, 1867.]

HELD by Glover, J., that incendiarism having, on several occasions, occurred in a village, produced by a ball of rag with a piece of burning charcoal within it, and the prisoner one evening being discovered to have a ball of that description concealed in his dhoti, which contained burning charcoal, he is, under s. 511, guilty of an attempt to commit mischief by fire. The possession of the instrument to commit mischief by fire, and the going about of the person with it, are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt. Held by Mitter, J., that the possession of a fire-ball and moving about with it cannot support a conviction under ss. 436 and 511. These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling. To constitute an offence under s. 511, it is not only necessary that the prisoner should have done an overt act towards the commission of the offence, but that the act itself should have been done in the attempt to commit it.—Queen v. Doyal Bawri, 3 B. L. R. A. Cr. 55. [Glover and Mitter, JJ. Sep. 1, 1869.]

Ditto.

**437.** Whoever commits mischief to any decked vessel, or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of

\* The words quoted have been inserted by Act VIII. of 1882, s. 10.



either description for a term which may extend to ten years, and shall also be liable to fine.

**438.** Whoever commits, or attempts to commit, by fire or any explosive substance, such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for mischief described in section 437, committed by fire or explosive substances. Ct. of Ser. Cognizable. Warrant. Not bailable. Not comp.

**439.** Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for intentionally running vessel aground or ashore with intent to commit theft, &c. Ditto.

**440.** Whoever commits mischief, having made preparation for causing to any person death, or hurt, or wrongful restraint, or fear of death, or of hurt, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Mischief committed after preparation made for causing death or hurt. Ditto.

#### OF CRIMINAL TRESPASS.

**441.** Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such property; or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass."

Criminal trespass.

IN this section the word "offence" has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.—S. 40, Penal Code.

A PERSON who forcibly enters upon property in the possession of another, and erects a building thereon, or does any other act with intent to annoy the person so in possession, is guilty of criminal trespass within the meaning of s. 441 of the Penal Code, without reference to the question in whom the title to the land may ultimately be found.—Queen v. Ram Dyal Mundle, 7 W. R. 28. [Kemp and Markby, JJ. Feb. 4, 1867.]

IN order to convict of criminal trespass under s. 441 of the Penal Code, it must be proved that the property was in the possession of the prosecutor, and that the entry was made with intent to "commit an offence, or to intimidate, insult, or annoy any person in possession of the property."—Reference in the Case of Kalinath Nag Chowdhry, 9 W. R. 1. [Kemp and Mitter, JJ. Dec. 21, 1867.]

WHERE the accused secretly entered an exhibition-building without having purchased a ticket, and was there apprehended, it was held that such act did not amount to the offence of cheating under s. 415 of the Penal Code. Such entry, when unaccompanied by any of the intents specified in s. 441 of the Penal Code, does not amount to criminal trespass or any other offence.—Reg. v. Mehervanji Bejanji, 6 Bom. H. C. R. 6. [Tucker and Warden, JJ. Feb. 11, 1869.]

HELD by Jackson, J. (setting aside the order of the Magistrate, Markby, J., dissenting), that a Magistrate ought not to decline to go into a case of criminal trespass under s. 441 of the Penal Code, because the complainant did not make out his title to the land:

the offence may be committed in respect of property in a person's possession, even though such possession may not have originated in right.—*Queen v. Surwan Singh and others*, 11 W. R. 11. [Jackson and Markby, JJ. Feb. 17, 1869.]

It is essential to a conviction for criminal trespass under s. 441 of the Penal Code that there should be the intent to commit an offence, or to intimidate, insult, or annoy any person.—*Queen v. Chooramoni Sant*, 14 W. R. 25. [Jackson and Mitter, JJ. July 30, 1870.]

THE accused were convicted of criminal trespass under s. 441 of the Penal Code for driving their carts across an open green in violation of an order issued by the Municipal Commissioners. *Held* that there was nothing to show that the Municipal Commissioners had authority to issue such an order, and that the breach of it was not criminally punishable.—*Pro.*, Oct. 28, 1870, 5 Mad. H. C. R. Ap. 38.

ACCUSED was *ejman* of complainant's family. Complainant obtained a decree setting aside an alienation made by accused. In execution complainant obtained possession from the alienee. The accused entered on this land. *Held* that he had not committed the offence of criminal trespass.—*Pro.*, Feb. 10, 1871, 6 Mad. H. C. R. Ap. 19.

AN intention to intimidate, insult, or annoy any person in possession of a house, does not mean to insult or annoy any person in constructive, but in actual possession of the premises.—*Ishur Chunder Kurmoker v. Seetul Dass Mitter*, 17 W. R. 47; 8 B. L. R. Ap. 62. [Couch, C.J., and Ainslie, J. April 6, 1872.]

TO BRING an act of trespass within the meaning of the Penal Code, s. 441, the entry upon the land must be with the intent to annoy, which means *with the purpose of annoying* the person in possession.—*Shib Nath Banerjee*, Petitioner, 24 W. R. 58. [Phear and Lawford, JJ. Oct. 1, 1875.]

A PERSON plying a boat for hire at a distance of three miles from a public ferry cannot be said, with reference to such ferry, to commit "criminal trespass" within the meaning of that term in s. 441 of the Penal Code. If, when directed by the order of a public servant, duly promulgated to him, to abstain from plying a boat for hire at or in the immediate vicinity of a public ferry, a person disobeys such direction, he renders himself liable to punishment under the Penal Code.—*Muthra v. Jawahir*, 1. L. R., 1 All. 527. [Spankie, J. Dec. 15, 1877.]

ENTRY into a local fund market with intent to evade payment of market-dues is not a criminal trespass.—*Reg. v. Varthappa*, 1. L. R., 5 Mad. 382. [Muttusami Ayyar and Tarrant, JJ. Aug. 29, 1882.]

**442.** Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel used as a human dwelling, or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass."

*Explanation.*—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

PRISONER was convicted of house-breaking, his object being to have sexual intercourse with complainant's wife. *Held* conviction valid.—*Pro.*, Feb. 26, 1875, 8 Mad. H. C. R. Ap. 6.

WHERE a person entered into a *havalat* with intent to convey or attempt to convey food to an under-trial prisoner, such act on his part did not amount to house-trespass within the meaning of s. 442 of the Penal Code, and it was not an act punishable under s. 45 of the Prisons Act. *Per* Spankie, J., *contra*. *Per* Stuart, C.J., that the fact that such person had been tried for house-trespass and acquitted was no bar to his being tried subsequently for an offence under s. 45 of the Prisons Act.—*Empress v. Lalai*, 1. L. R., 2 All. 301. [Stuart, C.J., and Spankie and Oldfield, JJ. May 16, 1879.]

ACCUSED, with intent to commit theft, entered at night a *dalan*, or entrance-hall, surrounded by a wall in which there were two door-ways, but without doors, which was used for the custody of property. *Held* that the *dalan* was a building within the meaning of ss. 380 and 442, and that a conviction under s. 457 was therefore maintainable.—*Dad v. Crown*, Panj. Rec., No. 10 of 1879.

A COURT-YARD, consisting of a walled enclosure with four *kothas* or chambers opening into it, and an outer door or gate leading into a side street, was held by a majority of the Court (Plowden, J., dissenting) to be a "building" within the meaning of s. 442.—*Shera v. Empress*, Panj. Rec., No. 35 of 1879.

**443.** Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit "lurking house-trespass."

**444.** Whoever commits lurking house-trespass after sunset and before sunrise is said to commit "lurking house-trespass by night."

**445.** A person is said to commit "house-breaking," who commits house-trespass if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or, having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

*First.*—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

*Secondly.*—If he enters or quits through any passage not intended by any person, other than himself or an abettor of the offence, for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

*Thirdly.*—If he enters or quits through any passage which he or any abettor of the house-trespass has opened, in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

*Fourthly.*—If he enters or quits by opening any lock in order to the committing of the house-trespass, or in order to the quitting of the house after a house-trespass.

*Fifthly.*—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

*Sixthly.*—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

*Explanation.*—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

#### Illustrations.

(a.) A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture. This is house-breaking.

(b.) A commits house trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(c.) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(d.) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(e.) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(f.) A finds the key of Z's house-door which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(g.) Z is standing in his door-way. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(h.) Z, the door-keeper of Y, is standing in Y's door-way. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

IN this section the word "offence" denotes a thing punishable under this Code, or under any special or local law as defined in this Code.—S. 40, Penal Code.

EFFECTING an entrance into a house at night by scaling a wall constitutes house-breaking by night under s. 445 of the Penal Code.—Queen v. Emdad Ally, 2 W. R. 65. [Glover, J. April 24, 1865.]

WHEN the door of a shop was found broken open, *held* that the conviction should have been for house-breaking by night, and not simply lurking house-trespass by night.—Queen v. Kenaram Bousee, 4 W. R. 19. [Glover J. Oct. 25, 1865.]

WHEN a prisoner, convicted of "house-breaking in order to commit theft" and of "theft," both offences being portions of one continuous criminal act, was sentenced, on the first head of charge, to one year's rigorous imprisonment, under s. 457 of the Penal Code, and, on the second head of charge, to receive twenty stripes, under s. 2 of the Whipping Act (VI. of 1864), the separate sentences, though not illegal, were disapproved of, as contrary to the spirit and intention of the Whipping Act.—Reg. v. Genu bin Aku, 5 Bom. H. C. R. 83. [Couch, C.J., and Newton, J. Sep. 16, 1868.]

House-breaking by night.

**446.** Whoever commits house-breaking after sunset and before sunrise is said to commit "house-breaking by night."

**447.** Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

The entry by one man on another's property accompanied by the cutting down of trees in that property is criminal trespass.—Queen v. Jeenut Bebee, 1 W. R. 46. [Kemp and Glover, JJ. Dec. 21, 1864.]

THE prisoner entered a house for the purpose of committing an assault, and, in carrying out that intention, caused grievous hurt. In convicting and punishing him for the substantive offence (grievous hurt), *held* that it was not necessary to pass a separate sentence for the offence of house-trespass.—Queen v. Bassoo Rannah, 2 W. R. 29. [Kemp and Glover, JJ. Jan. 30, 1865.]

WHERE a constable and others enter a house and apprehend certain persons as gamblers, and afterwards release them on payment of a sum of money by the latter, the offence committed is not house-trespass and extortion, but taking a bribe as regards the constable, and abetment of that offence as regards the others.—Government v. Mahomed Hossein and others, 5 W. R. 49. [Norman and Campbell, JJ. Mar. 5, 1866.]

THE order of the Magistrate directing the prisoner, on the expiration of his sentence for the offence of criminal trespass, to execute personal recognizances to keep the peace, was upheld as legal and necessary.—Queen v. Gendoo Khan, 7 W. R. 14. [Kemp and Glover, JJ. Jan. 21, 1867.]

HELD by Jackson, J. (setting aside the order of the Magistrate, Markby, J., dissenting), that a Magistrate ought not to decline to go into a case of criminal trespass under s. 441 of the Penal Code, because the complainant did not make out his title to the land: the offence may be committed in respect of property in a person's possession, even though such possession may not have originated in right.—Queen v. Surwan Singh and others, 11 W. R. 11. [Jackson and Markby, JJ. Feb. 17, 1869.]

WHERE the trespass (if any) was not committed with the intent to commit an offence, or to intimidate, insult, or annoy the person in possession, but in the *bond fide* assertion of a claim of title, this does not amount to criminal trespass.—Queen on the Prosecution of Gokul Chund v. Seith Rosnun Lal, 2 N. W. P. 82. [Turner and Spankie, JJ. Feb. 11, 1870.]

THE defendant was convicted under s. 447 of the Penal Code for cultivating village waste-land which he had been ordered by the Subordinate Collector to refrain from cultivating. The High Court upheld the conviction.—Pro., Feb. 15, 1870, 5 Mad. H. C. R. Ap. 17.

THE accused were convicted of criminal trespass under s. 443 of the Penal Code for driving their carts across an open green in violation of an order issued by the Municipal Commissioners. Held that there was nothing to show that the Municipal Commissioners had authority to issue such an order, and that the breach of it was not criminally punishable.—Pro., Oct. 28, 1870, 5 Mad. H. C. R. Ap. 38.

To bring a case under the definition of trespass in s. 441 of the Penal Code, the entry must be made with the intent to commit an offence, or to intimidate, insult, or annoy. One member of a joint family commits no trespass by entering the house which forms the joint-property, but he is guilty of that offence when he enters the room ordinarily occupied by another member of the family.—Prankisto Chunder and others v. Bissonath Chunder, 15 W. R. 6; 6 B. L. R. Ap. 80. [Norman, Offg. C.J., and Loch, J. Jan. 21, 1871.]

DEFENDANT was convicted of criminal trespass for having enclosed and commenced to cultivate a portion of a burial ground. Held that the conviction was right. The person (corporate) in possession of the burial ground is the portion of the public entitled to use the burial ground, and the act of ploughing up the burial ground was evidence of intent to annoy such person, the defendant not being one of the portion of the public entitled to its use.—Pro., Mar. 28, 1871, 6 Mad. H. C. R. Ap. 25.

DEFENDANT was convicted of criminal trespass for including in his own land a portion of a public footpath. Held that as the public generally were entitled to the use of the footpath, there was no illegal entry by the defendant on property in the possession of another with intent to annoy the person in possession, and consequently that the defendant was wrongly convicted.—Pro., May 25, 1871, 6 Mad. H. C. R. Ap. 26.

IN the definition of criminal trespass, the entry and the intention with which a party enters are the essentials. Thus, where A and B all along asserted their prescriptive right to fish in a lake free of rent, and C had failed to establish the relationship of landlord and tenant in a suit brought by him under Act X. of 1859 to get rent from them, held that no conviction for criminal trespass could be had against A and B, and that C's remedy was by suit in the Civil Court, either to eject them if he treated them as trespassers, or to have them declared liable to pay him rent for the future.—Sristeedhur Paroo and others v. Indro Bhosun Chuckerbutty, 18 W. R. 25; 9 B. L. R. Ap. 19. [Kemp and Glover, JJ. July 2, 1872.]

ON a conviction for criminal trespass under s. 447, Penal Code, the Joint-Magistrate added to the sentence of imprisonment an order that the prisoners should give recognizances to keep the peace. The Sessions Judge recommended that the order as to recognizances should be quashed, as criminal trespass was not one of the offences detailed in s. 489 of Act X. of 1872 (corresponding with s. 106 of Act X. of 1882) for which such recognizance could be taken. The High Court declined to act on this recommendation, holding that there was nothing illegal in the Joint-Magistrate's order, the conduct of the accused clearly pointing to an intention to commit a breach of the peace.—Queen v. Jhapoo and others, 20 W. R. 37. [Markby and Birch, JJ. June 16, 1873.]

THE unlawful infringement of a right of exclusive fishery in a part of a public river is not an offence which can be brought within the definition of 'criminal trespass' in the Penal Code.—Empress v. Charu Nayiah, 1 L. R., 2 Cal. 354. [Markby and Prinsep, JJ. May 4, 1877.]

ACCUSED for several years cultivated land under a lease from the Forest Department which was renewed annually. During the period of his occupation accused built a dwelling-house, and made other improvements. The Forest Department requiring the land for conservation, accused was served with notice of ejectment, and he was told to remove the materials of his house. Accused refused to relinquish the land until payment of compensation for his improvements, whereupon he was criminally prosecuted by the Forest Depart-

ment, and convicted by the Tahsildar of Kharian of criminal trespass under s. 447. *Held* that the conviction was illegal. In order to sustain a conviction for criminal trespass, it must be shown that the property was in the possession of some other person than the alleged trespasser.—*Crown v. Foujdar, Panj. Rec., No. 28 of 1878.*

WHERE the accused persons (execution-creditors), in company with an authorized bailiff, broke open complainant's door before sunrise, with intent to distrain his property, for which they were convicted on a charge of lurking house-trespass by night or house-breaking by night, *held* that as they were not guilty of the offence of criminal trespass, there being no finding of any such intent as is required to constitute that offence, and that as criminal trespass is an essential ingredient of either of the offences with which they were charged, the conviction must be quashed.—*In the Matter of Jotharam Davay, I. L. R., 2 Mad. 30. [Innes and Muttusami Ayyar, JJ. Sep. 27, 1878.]*

If a person enters on land in the possession of another in the exercise of a *bonâ fide* claim of right, and without any intention to intimidate, insult, or annoy such other person, or to commit an offence, then, though he may have no right to the land, he cannot be convicted of criminal trespass. So also, if a person deals injuriously with property in the *bonâ fide* belief that it is his own, he cannot be convicted of mischief. The mere assertion, however, in such cases of a claim of right is not in itself a sufficient answer to charges of criminal trespass and mischief. It is the duty of the Criminal Court to determine what was the intention of the alleged offender, and if it arrives at the conclusion that he was not acting in the exercise of a *bonâ fide* claim of right, then it cannot refuse to convict the offender, assuming that the other facts are established which constitute the offence. Where a person committed a trespass with the intention of committing mischief, thereby committing criminal trespass, and at the same time committed mischief, *held* that such person could not, under cl. 3 of s. 454 of Act X. of 1872 (corresponding with cl. 3 of s. 235 of Act X. of 1882), receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not in such a case prohibit the Court from passing sentence in respect of each offence established.—*Empress v. Budh Singh, I. L. R., 2 All. 101. [Turner, J. Jan. 24, 1879.]*

A, WHO had been warned off the lands of B, subsequently, having shot a deer near the boundary of B's land, and the deer having run on to B's land, followed it on to such land for the purpose of killing it. *Held* that his doing so was not a criminal trespass.—*In the Matter of the Petition of Chundoo Narain v. Farquharson (J. G.), I. L. R., 4 Cal. 837. [Birch and Mitter, JJ. Mar. 28, 1879.]*

CERTAIN immoveable property was the joint undivided property of C, G, and a certain other person. R obtained a decree against G for the possession of such property, and such property was delivered to him in the execution of that decree in accordance with the provisions of s. 264 of Act X. of 1877. C in good faith, with the intention of asserting her right, and without any intention to intimidate, insult, or annoy R, or to commit an offence, and G, in like manner, with the intention of asserting the right of his co-owners, remained on such property. *Held* that, under such circumstances, they could not be convicted of criminal trespass. Re-entry into, or remaining upon, land from which a person has been ejected by civil process, or of which possession has been given to another for the purpose of asserting rights he may have solely or jointly with other persons, is not criminal trespass, unless the intent to commit an offence, or to intimidate, insult, or annoy, is conclusively proved.—*In the Matter of the Petition of Gobiud Prasad, I. L. R., 2 All. 465. [Straight, J. Oct. 15, 1879.]*

A, THE servant of B, was convicted of criminal trespass, in going upon the land of C, one of B's tenants, and preventing him from cutting his crops. B was convicted of abetment of criminal trespass. A and B pleaded that they were acting in the exercise of the legal right of distraint. It appeared that no written demand under s. 72 of the Rent Act (Beng. Act VIII. of 1869) for the amount of the arrears, together with an account exhibiting the grounds on which demand had been made, was served on C, and that no written authority under s. 76 had been given by B to A. *Held* that it lay upon A and B to show that they had conformed to the provisions of the law, or at least had acted with the *bonâ fide* intention of distraining the complainant's crops; and that the conviction was right. *Held* also that as, under s. 74, standing crops and ungathered products may, notwithstanding distraint, be reaped and gathered by the cultivator, A had no right, even if he was acting *bonâ fide*, to restrain C from cutting his crops.—*Jhumuk Noniah v. Shudashib Roy, I. L. R., 7 Cal. 26. [Pontifex and Field, JJ. Mar. 31, 1881.]*

A CHARGE of house-trespass with intent to commit adultery can be entertained without a complaint by the husband or the person having care of the woman. (*Per* Lindsay and Plowden, JJ., Fitzpatrick, J., dissenting).—*Crown v. Subz Ali*, Panj. Rec., No. 2 of 1877.

**452.** Whoever commits house-trespass, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

WHERE A goes with a forged warrant of arrest into a house, and takes away one of the inmates against his will under the authority of such warrant, he is guilty of house-trespass by putting such person in fear of wrongful restraint under s. 452 of the Penal Code.—*Queen v. Nundo Mohun Sirkar*, 12 W. R. 33. [*Kemp and Glover*, JJ. July 15, 1869.]

**453.** Whoever commits lurking house-trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

**454.** Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

HOUSE-BREAKING by night and theft form a single and entire offence, and cannot be punished separately.—*Queen v. Tonaokoch*, 2 W. R. 63. [*Jackson and Glover*, JJ. April 19, 1865.]

PRISONER was convicted of house-breaking, his object being to have sexual intercourse with complainant's wife. *Held* conviction valid.—*Pro.*, Feb. 26, 1875, 8 Mad H. C. R. Ap. 6.

**455.** Whoever commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**456.** Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 456 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—*Crim. Pro. Code*. (Act X. of 1882), s. 44.

A PRISONER may be convicted of theft in a building and of house-breaking by night with intent to commit theft, though if the Judge considers the punishment for the first offence sufficient, he need not award any additional sentence for the second.—*Queen v. Tincowree*, W. R. Sp. 31. [*Jackson*, J. May 11, 1864.]

FIVE men armed were discovered committing an act of house-breaking by night. One of the parties was engaged in cutting a hole through the wall, while the others stood on guard. When the alarm was given, the neighbours ran up, and one of the robbers cut down one of the villagers. The robbers effected their escape, not however before two of them were identified, the prisoners in the case. *Held* that the crime of which the prisoners were guilty was house-breaking by night, and not dacoity.—Queen v. Rewut Rajwar and another, W. R. Sp. 39. [Loch, Seton-Karr, and Jackson, JJ. July 19, 1864.]

HOUSE-BREAKING by night and theft form a single and entire offence, and cannot be punished separately.—Queen v. Tonaokoch, 2 W. R. 63; 4 R. J. P. J. 563. [Jackson and Glover, JJ. April 19, 1865.]

A PERSON convicted of house-breaking, followed immediately by theft, is punishable only under s. 457 of the Penal Code.—Queen v. Chytun Bowra and others, 5 W. R. 49. [Jackson and Glover, JJ. Mar. 5, 1866.]

THE splitting up of one aggravated offence into separate minor offences (e.g., a conviction for lurking house-trespass and theft under ss. 456 and 380 of the Penal Code, instead of for lurking house-trespass in order to commit theft under s. 457) prohibited. Where a Magistrate convicted under ss. 456 and 380, it was held that the Judge, on appeal, instead of setting aside the conviction, and sending the case back to the Magistrate for re-trial under ss. 457 and 380, ought only to have set aside the conviction under s. 380, and allowed the conviction under s. 456 to stand. (Norman, J., *dubitante*).—Queen v. Ram Churn Kairee, 6 W. R. 39. [Peacock, C.J., and Norman, Kemp, Seton-Karr, and Campbell, JJ. July 9, 1866.]

**457.** Whoever commits lurking house-trespass by night or house-breaking by night in order to the committing of any offence punishable with imprisonment shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

*Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Cognizable. Warrant. Not bailable. Not comp.*

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 457 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code. (Act X. of 1882), s. 44.

IN drawing up a charge under s. 457, it is essential to mention the offence which the trespasser intended to commit.—2 W. R. Cr. L. 13, No. 1119 of 1864.

A PRISONER who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under s. 460, and not under ss. 457 and 321 of the Penal Code.—Queen v. Lukhun Doss, 2 W. R. 52. [Jackson and Glover, JJ. April 1, 1865.]

HOUSE-BREAKING by night and theft form a single offence, and cannot be punished separately, but under s. 457.—Queen v. Touaokoch, 2 W. R. 63; 4 R. J. P. J. 563. [Jackson and Glover, JJ. April 19, 1865.]

S. 71 of the Penal Code applies to the case of a person charged with "house-breaking" under s. 457, and "theft" committed under s. 380.—Ram Golam Singh, Petitioner, 6 W. R. 59. [Loch and Jackson, JJ. Aug. 27, 1866.]

IN the case of a conviction of attempting to commit house-breaking by night with intent to commit theft, a sentence of whipping was annulled as being illegal.—Reg. v. Yellá valad Parshia, 3 Bom. H. C. R. 37. [Couch, C.J., and Newton, J. Nov. 21, 1866.]

SEPARATE convictions and sentences under ss. 494 and 397, and under ss. 457 and 380 of the Penal Code, were set aside, and the convictions under s. 429 in the former case, and under s. 457 in the latter, allowed to stand.—Queen v. Sahrae and others, 8 W. R. 31. [Jackson and Hobhouse, JJ. July 1, 1867.]



WHERE facts prove (1) a house-breaking by night with intent to commit theft, and (2) theft in a building, it is not necessary to divide the charge into two counts. The actual commission of the theft is conclusive evidence of the intent, and it is therefore sufficient to convict for the major offence under s. 457.—*Mad. H. C.R.* Jan. 20, 1868; 2 *Mad. Jur.* 77; see too *Reg. v. Sahrae*, 8 *W. R.* 31, *supra*, p. 393.

WHERE a First-class Subordinate Magistrate sentenced a prisoner to six months' rigorous imprisonment under s. 457 of the Penal Code, and, finding that the prisoner was liable to enhanced punishment under s. 75 of the Penal Code, sentenced the prisoner to six months' further imprisonment under s. 46 of the Code of Criminal Procedure (Act XXV. of 1861), corresponding with s. 35 of the new Code of Criminal Procedure (Act X. of 1882), the latter sentence was set aside by the High Court.—*Pro.*, Nov. 2, 1869, 5 *Mad. H. C. R.* Ap. 3.

Held that where, in the course of one and the same transaction, an accused person appears to have committed several acts, directed to one end and object, which together amount to a more serious offence than each of them taken individually by itself would constitute, although for purposes of trial it may be convenient to vary the form of charge, and to designate not only the principal but the subsidiary crimes alleged to have been committed, yet in the interests of simplicity and convenience it is best to concentrate the conviction and sentence on the gravest offence proved. Where, therefore, a person who broke into a house by night, and committed theft therein, was charged and tried for offences under ss. 380 and 457 of the Penal Code, and was convicted of both those offences, and punished for each with rigorous imprisonment for 18 months, the Court convicted him of the offence under s. 457, and sentenced him to rigorous imprisonment for three years, and acquitted him of the offence under s. 380.—*Empress v. Ajudhin*, 1, *L. R.*, 2 *All.* 644. [*Straight*, J. Jan. 19, 1880.]

THE accused was convicted at one trial by a Magistrate of the First Class of the offences of house-breaking by night with intent to commit theft, punishable under s. 457, and of theft in a dwelling-house, punishable under s. 380 of the Penal Code (Act XLV. of 1860), the two offences being part of the same transaction, the theft following the house-breaking. The prisoner was sentenced to two years' rigorous imprisonment under s. 457, and to six months' rigorous imprisonment and a fine of Rs. 100, or, in default of payment, three months' further rigorous imprisonment, under s. 380. The District Magistrate referred the case to the High Court, on the ground that the aggregate of punishment awarded on the two heads of charge exceeded the powers of the First-class Magistrate who tried the case. The Sessions Judge, to whom an appeal had been preferred, was of the same opinion, and reduced the sentence to two years' rigorous imprisonment. Held that as the accused committed two distinct offences which did not "constitute, when combined, a different offence" punishable under any section of the Penal Code (Act XLV. of 1860), s. 71 of the Code did not apply, and as the aggregate punishment did not exceed twice the amount of punishment which the trying Magistrate was competent to inflict, the sentences were legal under s. 35 of the Criminal Procedure Code (Act X. of 1882). *Per Jardine, J.*—The rules for assessment of punishment, contained in s. 235 of the Criminal Procedure Code of 1872, having been omitted in s. 235 of the Criminal Procedure Code of 1882, must now be sought for in s. 71 of the Penal Code (Act XLV. of 1860) and in s. 35 of the Criminal Procedure Code (Act X. of 1882).—*Queen-Empress v. Sakharām Bhān*, 1, *L. R.*, 10 *Bom.* 493. [*Birdwood and Jardine, JJ.* Feb. 1886.]

#### 458. Whoever commits lurking house-trespass by night or house-

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Cognizable.  
Warrant.  
Not bailable.  
Not comp.

Lurking house-trespass or house-breaking by night, after preparation made for causing hurt to any person.

breaking by night, having made preparation for causing hurt to any person, or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt, or of

assault, or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 458 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—*Crim. Pro. Code* (Act X. of 1882), s. 44.

A DEPUTY Magistrate has no power to convict of theft (s. 380), where the offence charged is lurking house-trespass by night with aggravating circumstances (ss. 458 and 459), but must commit on the latter charge.—*Puran Telee v. Bhuttoo Dome*, 9 W. R. 5. [Kemp and Jackson, JJ. Jan. 13, 1869.]

**459.** Whoever, whilst committing lurking house-trespass or house-breaking, causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*Griovous hurt caused whilst committing lurking house-trespass or house-breaking.* Ct. of Ses. Cognizable. Warrant. Not bailable. Not comp.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 459 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

WHEN the door of a shop was found broken open, held that the conviction should have been for house-breaking by night, and not simply lurking house-trespass by night.—*Queen v. Kenaram Bousee*, 4 W. R. 19. [Glover, J. Oct. 25, 1865.]

IN a case of conviction of house-breaking by night in order to commit theft under s. 457, and theft under s. 380 of the Penal Code, there may be either one sentence for both offences, or separate sentences for each offence, provided that the total punishment awarded does not exceed that which may be given for the graver offence.—*Reg. v. Tukayá bin Tamana*, I. L. R., 1 Bom. 214. [Westropp, C.J., and Kemball, West, and Nánábhái Hariddás, JJ. Sep. 11, 1875.]

To support a charge under s. 459 (causing grievous hurt, &c., whilst committing house-breaking) or s. 460 (causing grievous hurt, &c., at the time of committing house-breaking), the grievous hurt must be caused or the attempt must be made during the time that the house-breaking is being committed, and not after that offence is completed, and the offender has left the premises.—*Imamuddin v. Crown*, Panj. Rec., No. 17 of 1876.

Ss. 459 and 460 of the Penal Code provide for a compound offence, the governing incident of which is that either a "lurking house-trespass" or "house-breaking" must have been completed, in order to make a person who accompanies that offence either by causing grievous hurt or attempt to cause death or grievous hurt responsible under those sections. The sections must be construed strictly, and they are not applicable where the principal act done by the accused person amounts to no more than a mere attempt to commit lurking house-trespass or house-breaking.—*Queen-Empress v. Ismail Khan*, I. L. R., 8 All. 640. [Straight, Offg. C.J. Aug. 9, 1886.]

**460.** If, at the time of the committing of lurking house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

*All persons jointly concerned in house-breaking, &c., punishable where death or grievous hurt caused by one of them.* Ditto.

EVERY person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under s. 460 of the Penal Code, shall forthwith give information to the nearest Magistrate or police-officer of such commission or intention.—Crim. Pro. Code (Act X. of 1882), s. 44.

A PERSON who, in the commission of lurking house-trespass by night, voluntarily attempts to cause grievous hurt to the owner of the house who tries to capture him, is punishable under s. 460, and not under ss. 457 and 324 of the Penal Code.—*Queen v. Lukhun Doss*, 2 W. R. 52. [Jackson and Glover, JJ. April 1, 1865.]

THE appellants and another person attempted to break into a house by night for the purpose of committing theft, and were interrupted by the inmates, one of whom was killed by one of the accused. There was no evidence to show which of the accused caused death: *Held* that the appellants could not be punished with transportation for life under s. 460, as the offence of house-breaking had been attempted only, and not committed.—*Saifudin v. Crown*, Panj. Rec., No. 16 of 1874.

To support a charge under s. 459 (causing grievous hurt, &c., whilst committing house-breaking) or s. 460 (causing grievous hurt, &c., at the time of committing house-breaking), the grievous hurt must be caused or the attempt must be made during the time that the house-breaking is being committed, and not after the offence is completed, and the offender has left the premises.—*Imamuddin v. Crown*, Panj. Rec., No. 17 of 1876.

CRIMINAL Courts dealing with an approver's evidence in a case where several persons are charged should require corroboration of his statements in respect of the identity of each of the individuals accused. *Queen-Empress v. Ram Saran* (I. L. R., 8 All. 306), *Queen-Empress v. Kure* (2 Weekly Notes, 1886, p. 65), and *Reg. v. Mullius* (3 Cox, C. C., 526), referred to. A, B, M, R, and N, were tried together on a charge under s. 460 of the Penal Code. The principal evidence against all of them was that of an approver. Against A, B, and M, there was the further evidence that they produced certain portions of the property stolen on the night of the crime from the house where the crime was committed. With regard to R, it was proved that he was present when B pointed out the place where some of the property was dug up, but he did not appear to have said anything or give any directions about it. *Held* with reference to A, B, and M, that it could not be said that their recent possession of part of the stolen property, so soon after it had been stolen, was not such corroboration of the approver's evidence of their participation in the crime as entitled the Court to act upon his story in regard to those particular persons. *Held* that, inasmuch as there was no sufficient material to warrant the inference of guilty knowledge on R's part, and, with regard to N, no property was found with him or produced through his instrumentality, both R and N ought to have been acquitted.—*Queen-Empress v. Baldeo*, I. L. R., 8 All. 509. [Straight, Offg. C.J. June 28, 1886.]

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

#### 461. Whoever dishonestly, or with intent to commit mischief, breaks

Dishonestly breaking open open or unfastens any closed receptacle, which contains, or which he believes to contain, property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

ACCORDING to the definition given in s. 442, a large circular receptacle for grain, made of straw, with an opening in the top, and situated in a back-yard, is not "a place for the custody of property," and therefore the offence of house-breaking cannot be committed in respect of it; but the offence really committed was the dishonestly breaking open a closed receptacle containing property.—*Mad. H. C. Rul.*, 1865, on s. 457.

#### 462. Whoever, being entrusted with any closed receptacle which con-

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
or 2nd class.  
Cognizable.  
Warrant.  
Bailable.  
Not comp.

Punishment for same offence when committed by person entrusted with custody. tains, or which he believes to contain, property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

### CHAPTER XVIII.

#### OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

463. Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or

Forgery.

to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed, commits forgery.

THE forgery of a copy of a document comes within the definition of forgery as contained in s. 463 of the Penal Code.—*Eshan Chunder Dutt and others v. Pran Nath Chowdhry and another*, W. R. Sp. 71; Marsh. R. 270. [Peacock, C.J., and Bayley and Kemp, JJ. Feb. 9, 1863.]

THE making of a fraudulent document without any criminal intent has been held to be no offence under this Code.—3 W. R. Cr. L. 18, No. 689 of 1865.

THE fraudulent preparation of a deed intending to cause injury to certain parties is not forgery unless such deed is a false document.—5 W. R. Cr. L. 2, No. 157 of 1866.

THE signing of a vakalatnāma in the name of co-decree-holders without their authority to do so, and delivering it to a vakil, with instructions to file a petition, stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery within the meaning of s. 463 of the Penal Code.—*Queen v. Gaynee Ram*, 6 W. R. 78. [Markby, J. Sep. 27, 1866.]

WHERE a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI. of 1867, filed stamp-paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp-paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect, which was antedated, it was held that he was guilty of having abetted the commission of a forgery of a document within s. 463 and cl. 1, s. 464 of the Penal Code.—*Queen v. Sookmoy Ghose*, 10 W. R. 23. [Loch and Glover, JJ. July 25, 1868.]

THE simple making of a false document constitutes the offence of forgery under s. 463 of the Penal Code, and it is not necessary that it should be issued or made known to the injury of a person's reputation either by being presented in Court, or shown to any person. A false document may be made in the name of a fictitious person. Where a draft petition was prepared with the intention of being used as evidence of a matter, it was held that it fell within the terms of s. 29 of the Penal Code; and, as it contained false statements calculated to injure the reputation of a person, the offence was held to fall within s. 469 of the Penal Code.—*Revision of Proceedings in the Case of Sheefait Ally and others*, 10 W. R. 61; 2 B. L. R. A. Cr. 12. [Loch and Glover, JJ. Dec. 14, 1868.]

A SPECIALLY registered bond was presented before the Small Cause Court Judge for execution under s. 53, Act XX. of 1866; and a decree passed upon it in the usual form. Subsequently the Registrar sanctioned the prosecution of the decree-holder on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence or making further inquiry, set aside the decree, and sanctioned the prosecution under s. 170 of the Criminal Procedure Code (Act XXV. of 1861), corresponding with s. 195 of the new Code of Criminal Procedure (Act X. of 1882). Held that he was justified in sanctioning the prosecution, but not in setting aside the decree.—*Queen v. Nawab Sing*, 3 B. L. R. A. Cr. 9. [Norman and Jackson, JJ. April 2, 1869.]

THE subsequent falsification of a roznamohabahi kept in the office of a Deputy Inspector of Schools by the mohurrir in charge thereof for the purpose of concealing frauds previously committed, merely with a view to avoid disgrace and punishment, held not to fall within the definition of forgery as given in the Penal Code. Appeal from the order of the Sessions Judge of Goruckpore.—*Queen v. Jageshur Pershad*, 6 N. W. P. 56. [Pearson, J. Dec. 20, 1873.]

A SIGNED B's name to petitions presented by C to the Māmlatdār, requesting his summary assistance, under Reg. XVII. of 1827, for the recovery of rents from B's tenants. Held that, even if A had no authority from B to sign his name, and if A wished to deceive the Māmlatdār into the belief that it was B himself who had signed the petitions, still, if there had been no intention to defraud anybody, or if no wrongful gain or wrongful loss could have been caused to A or B, A's act did not constitute forgery within the meaning of the Penal Code. Avoidance of litigation is no wrongful loss to Government.—*Reg. v. Bhavānīshankar*, 11 Bom. H. C. R. 3. [Melvill and Nānābhāi Haridās, JJ. Feb. 19, 1874.]

FALSIFICATION of a record made in order to conceal a previous act of negligence not amounting to fraud does not amount to forgery within the meaning of ss. 463 and 464 of the Penal Code.—*Empress v. Shankar*, 1 L. R., 4 Bom. 657. [Kemball and Melvill, JJ. July 19, 1880.]

THAT which constitutes a false document within the meaning of ss. 463 and 464 of the Penal Code is not the writing of any number of words which in themselves are innocent, but the affixing the seal or signature of some other person to the document with a knowledge that the seal or signature is not his, and that he gave no authority to affix it. A person, therefore, who has given orders for the printing of certain receipt-forms similar to those formerly used by a certain Company, and corrected the proofs of the same, it being his intention to use the receipt-forms in order to commit a fraud, cannot be convicted of forgery until one of the printed forms has been converted by him into a false document, nor of an attempt to commit forgery until he had done some act towards making one of the forms a false document. Until a form had been converted into a false document, all that was done consisted in mere preparation for the commission of an offence. An attempt to commit an offence must be to do that which, if successful, would amount to the offence charged. *Per* Garth, C.J.—The fact that the word “make” is used in s. 464 of the Penal Code in conjunction with the words “sign,” “seal,” or “execute,” clearly denotes that the making of a document does not mean writing or printing it, but signing or otherwise executing it.—In the Matter of the Petition of Riasat Ali, *alias* Babu Miya, *alias* Bodiuzzuma; *Empress v. Riasat Ali, alias Babu Miya, alias Bodiuzzuma*, I. L. R., 7 Cal. 352; 8 C. L.R. 572. [Garth, C.J., and Prinsep, J. June 3, 1881.]

ON the 2nd August 1884, a Munsif, who was of opinion that, in the course of a suit which had been tried before him, certain persons had committed offences under ss. 193, 463, and 471 of the Penal Code, and that the prosecution of these persons was desirable, made an order which he described as passed under s. 643 of the Civil Procedure Code, and in which he directed that the accused should be sent to the Magistrate, and that the Magistrate should inquire into the matter. In May 1885, upon an application by one of the accused to the District Court to “revoke the sanction for prosecution granted by the Munsif,” it was contended that the “sanction” had expired on the 2nd February 1885, and had ceased to have effect. *Held* by the Full Bench that the Munsif’s order, whether it was or was not a sanction, was a sufficient “complaint” within the meaning of s. 195 of the Criminal Procedure Code, and that the limitation period prescribed by that section was applicable to the case. *Per* Petheram, C.J., and Straight, J.—That, considering that s. 643 of the Civil Procedure Code was closely similar to s. 476 of the Criminal Procedure Code, the Munsif’s order might be taken as having been passed under the latter section. Also *per* Petheram, C.J., and Straight, J.—The words in s. 195 of the Criminal Procedure Code, “except with the previous sanction or on the complaint of the public servant concerned,” must be read in connection with s. 476, which was enacted with the object of avoiding the inconvenience which might be caused if a Munsif, or a Subordinate Judge, or a Judge, were obliged to appear before a Magistrate, and make a complaint on oath, like an ordinary complainant, in order to lay the foundation for a prosecution. The language of s. 476 indicates that where a Court is acting under s. 195, a complaint in the strict sense of the Code is not required, and that the procedure therein laid down constitutes the “complaint” mentioned in s. 195.—*Iskri Prosad v. Sham Lal*, I. L. R., 7 All. 871. [Petheram, C.J., and Straight, Brodhurst, and Tyrrell, JJ. July 4, 1885.]

464. A person is said to make a false document—  
Making a false document.

*First.*—Who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by, or by the authority of, a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or

*Secondly.*—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

*Thirdly.*—Who dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person, by reason of unsound-

ness of mind or intoxication, cannot, or that by reason of deception practised upon him he does not, know the contents of the document or the nature of the alteration.

*Illustrations.*

(a.) A has a letter of credit upon B for rupees 10,000, written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(b.) A, without Z's authority, affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money. A has committed forgery.

(c.) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(d.) A leaves with B, his agent, a cheque on a banker signed by A, without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(e.) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(f.) Z's will contains these words, "I direct that all my remaining property be equally divided between A, B, and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(g.) A endorses a Government promissory note, and makes it payable to Z or his order, by writing on the bill the words, "Pay to Z or his order," and signing the endorsement. B dishonestly erases the words, "Pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(h.) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed it to Z. A has committed forgery.

(i.) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and, by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(j.) A writes a letter, and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(k.) A, without B's authority, writes a letter, and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate, and thereby to induce Z to enter into an expressed or implied contract for service.

*Explanation 1.*—A man's signature of his own name may amount to forgery.

*Illustrations.*

(a.) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b.) A writes the word "accepted" on a piece of paper, and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B, knowing the fact, draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(c.) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable. Here A has committed forgery.

(d.) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure, with intent to defraud A, and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(e.) A, a trader, in anticipation of insolvency, lodges effects with B for A's benefit, and with intent to defraud his creditors, and, in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

*Explanation 2.*—The making of false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his life-time, may amount to forgery.

#### *Illustration.*

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

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It must be proved that the accused practised deception so as to prevent a person from knowing the nature of the document before the accused can be found guilty under s. 464 of the Penal Code of making a false document.—*Queen v. Nujeebutollah*, 9 W. R. 20. [Jackson, J. Feb. 20, 1868.]

WHERE a prisoner, who appealed to the Commissioner from an order of an assessor under Act XXI. of 1867, filed a stamp-paper for a copy of the assessor's decision after the period of appeal had elapsed, but on appeal averred that he filed the stamp-paper before the time for appealing had elapsed, and fraudulently obtained a certificate to that effect which was antedated, it was held that he was guilty of having abetted the commission of forgery of a document within s. 463 and cl. 1, s. 464, of the Penal Code.—*Queen v. Sookmoy Ghose*, 10 W. R. 23. [Loch and Glover, JJ. July 25, 1868.]

WHERE the accused, a mohurir in a registry-office, was charged with making false endorsements of registry on the back of certain deeds, which endorsements were signed by the registrar, it was held that, before he could be convicted of forgery under part 3, s. 464, Penal Code, it must be shown that the registrar, in consequence of deception practised upon him by the accused, did not know the contents of the document he was signing. Money received by a mohurir appointed under the Registration Act (IX. of 1862 B. C.) by way of fees for registering deeds is money entrusted to him as a public servant.—*Queen v. Dwarka Nath Ghose*, 20 W. R. 49. [Glover and Birch, JJ. July 9, 1873.]

WHERE prisoner, to screen his own negligence, altered an office-report, such conduct does not fall within the definition of forgery in the Penal Code.—*Queen v. Lall Gumal*, 2 N. W. P. 11. [Turner and Spankie, JJ. Jan. 18, 1870.]

A MISREPRESENTATION by false description of one's position in life falls under the heading of cheating, and not under that of forgery. Where, therefore, a document purported to have been signed by "G. L., patwari," and it was said that it was signed by G.

L., but at a time when G. L. was not a patwari, it was held that the document was not a forgery within s. 464 of the Penal Code.—*Joy Kurn Singh and others v. Man Patuck*, 21 W. R. 41. [Kemp and Ainslie, JJ. Feb. 17, 1874.]

FALSIFICATION of a record made in order to conceal a previous act of negligence not amounting to fraud does not amount to forgery within the meaning of ss. 463 and 464.—*Empress v. Shanker*, I. L. R., 4 Bom. 657. [Kemball and Melvill, JJ. July 19, 1880.]

WHERE the date of a document, which would otherwise not have been presented for registration within time, is altered for the purpose of getting it registered, the offence committed is not forgery, where there is nothing to show that it was done "dishonestly or fraudulently," within cl. 2, s. 464 of the Penal Code, but fabricating false evidence within s. 192.—*In re Mir Ekhar Ali*: *Empress v. Mir Ekhar Ali*, I. L. R., 6 Cal. 482. [Garth, C.J., and Field, J. Dec. 3, 1880.]

THAT which constitutes a false document within the meaning of ss. 463 and 464 of the Penal Code is not the writing of any number of words which in themselves are innocent, but the affixing the seal or signature of some other person to the document with a knowledge that the seal or signature is not his, and that he gave no authority to affix it. A person, therefore, who has given orders for the printing of certain receipt forms similar to those formerly used by a certain Company, and corrected the proofs of the same, it being his intention to use the receipt forms in order to commit a fraud, cannot be convicted of forgery until one of the printed forms has been converted by him into a false document, nor of an attempt to commit forgery until he had done some act towards making one of the forms a false document. Until a form had been converted into a false document, all that was done consisted in mere preparation for the commission of an offence. An attempt to commit an offence must be to do that which, if successful, would amount to the offence charged. *Per Garth, C.J.*—The fact that the word "make" is used in s. 464 of the Penal Code in conjunction with the words "sign," "seal," or "execute," clearly denotes that the making of a document does not mean writing or printing it, but signing or otherwise executing it.—In the Matter of the Petition of Riasat Ali, *alias* Babu Miya, *alias* Bodiuazzuma; *Empress v. Riasat Ali, alias Babu Miya, alias Bodiuazzuma*, I. L. R., 7 Cal. 352; 8 C. L. R. 572. [Garth, C.J., and Prinssep, J. June 3, 1881.]

THE vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration, they used the deed of sale as evidence in a suit. Held that the alteration of the deed did not amount to "forgery" within the meaning of s. 463 of the Penal Code, nor could the deed, after the alteration, be designated a "forged document" as contemplated by s. 470, the intention to cause wrongful loss or wrongful gain, or to defraud, being wanting; nor could it be said that, in using the deed, the vendees were "dishonestly" or "fraudulently" using as genuine a "forged document," and therefore the use by the vendees of the deed did not constitute any offence under s. 471 of the Penal Code. Further, that their use of it did not render them liable to conviction under s. 196 of that Code.—*Empress v. Fateh*, I. L. R., 5 All. 217. [Mahmood, J. Oct. 2, 1882.]

THE accused, in order to obtain a recognition from a Settlement Officer that they were entitled to the title of "Luskur," filed a sanad before that officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under ss. 471 and 464 of the Penal Code. Held on appeal that, even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to any one; their intention being to produce a false belief in the mind of the Settlement Officer that they were entitled to the dignity of "Luskur," and that this could not be said to constitute an "intention to defraud." A sanad conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code.—*Jam Mahomed and Jabar Mahomed v. Queen-Empress*; *Warris Meah v. Queen-Empress*, I. L. R., 10 Cal. 584. [Mitter and Norris, JJ. April 17, 1884.]

A TREASURY-ACCOUNTANT was convicted of offences under ss. 218 and 465 of the Penal Code under the following circumstances: A sum of Rs. 500, which was in the treasury, and was payable to a particular person through a Civil Court, was drawn out and paid away to other persons by means of forged cheques. After the withdrawal of the Rs. 500, but before such withdrawal had been discovered, the representative of the payee applied for payment. The prisoner then upon two occasions wrote reports to the effect that the Rs. 500 in question then stood at the payee's credit as a reserve deposit, and that it was about to be transferred to the Civil Court. Upon the first of these reports, an order was



signed by the treasury-officer for the transfer of the money to the Civil Court concerned, and to effect such transfer a cheque was prepared by the sale-muharrir, which, as originally drawn up, related to the sum of Rs. 500 already mentioned. The signature of the cheque by the treasury-officer was delayed for some time, and meanwhile the cheque was altered by the prisoner in such a manner as to make it relate to another deposit of Rs. 500 which had been made subsequently to the above, and to the credit of another person. The result of this was the transfer of the second payee's Rs. 500 to the Civil Court, as if it had been the first Rs. 500, and to the credit of the first payee's representative. The prisoner was convicted under s. 465 of the Penal Code in respect of the cheque, and under s. 218 in respect of the two reports above referred to. *Held*, with respect to the charge under s. 465, that the prisoner's immediate and more probable intention—which alone, and not his remoter and less probable intention, should be attributed to him—was not to cause wrongful loss to the second payee by delaying payment of the Rs. 500 due to her, though the act might have caused her loss, but to conceal the previous fraudulent withdrawal of the first payee's Rs. 500; that, under these circumstances, he could not be said to have acted "dishonestly" or "fraudulently" within the meaning of s. 24 or s. 25 of the Penal Code; and that, therefore, his guilt under s. 465 had not been made out, and the conviction under that section must be set aside. *Held* also that prisoner's intention in making the false reports was to stave off the discovery of the previous fraud and save himself or the actual perpetrator of that fraud from legal punishment, and that, having prepared the reports in a manner which he knew to be incorrect, he was rightly convicted under s. 218 of the Penal Code. *Held* further that as the prisoner, who was a public servant, made these reports, and assumed to make them in due course and as a part of his duty, and held them out as reports which were made by the proper officer, and as no question was put in the examination of the witnesses from the office which suggested that it was not his business to make such reports, it must be inferred that he made them because it was his business to do so, and as a public servant within the meaning of s. 218 of the Penal Code.—*Queen-Empress v. Gridhari Lal*, I. L. R., 8 All. 653. [Edge, C.J. Aug. 24, 1886.]

THE accused, who was a copyist in the Sub-divisional Office at B, applied for a clerkship then vacant in that office. An endorsement on his application, recommending him for the post, and purporting to have been made by the Sub-divisional Officer of B, was found to have been falsely made by the accused. The application was accompanied by a letter, also fabricated by the accused, purporting to be from the Collector to the Sub-divisional Officer at B, informing the latter officer that he, the Collector, had selected the accused for the vacant post. The Sub-divisional Officer, having some suspicion as to the genuineness of his letter, wrote a demi-official letter to the Collector to ascertain whether he had really written it; and this being posted in the local post-office, the accused fabricated a third document, purporting to be a letter from the Sub-divisional Officer to the post-master asking him to stop the despatch of the demi-official letter. The accused was charged with, and convicted in the Sessions Court of, the offence of forgery, under s. 464 of the Penal Code, in respect of the three documents. *Held* that the conviction was right with regard to the two first documents, but with regard to the third document it could not be said that he falsely made it either dishonestly or fraudulently within the meaning of that section.—*Abdul Hamid v. Empress*, I. L. R., 13 Cal. 349. [Mitter and Grant, JJ. Sep. 7, 1886.]

THE prisoner made certain entries in his ledger, which consisted of rough loose sheets, showing that certain sums of money had been repaid to the prosecutor, which, in fact, had not been repaid. *Held* that the prisoner was guilty of forgery under s. 464. Simply the omission of a count in the charge is a defect in the charge, and the Appellate Court may confirm a conviction under a different section of the Penal Code from that upon which the prisoner was tried and convicted, provided the prisoner has not been prejudiced or injured by the substitution of one section for another.—*Anonymous*, 1 Ind. Jur., N.S., 46.

**465.** Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

NO APPEAL lies from an order of a Civil Court directing a criminal prosecution for forgery committed before it.—*Gunga Narain Sircar v. Azeezoonissa Beebee*, 5 W. R. Mis. 18. [Bayley and Shumboonath Pundit, JJ. Feb. 6, 1866.]

WHEN a Civil Court directs that criminal proceedings be taken against a party to a suit before it for perjury or forgery, the High Court has no power, on an appeal being preferred against the decision of that Court, to direct that such proceedings be stayed until

the appeal shall have been heard and determined.—In the Matter of the Petition of Ram Prasad Hazra, B. L. R. Sup. Vol. 426 (F. B.). [Peacock, C.J., and Bayley, Seton-Karr, Pundit, and Maopherson, JJ. Feb. 12, 1866.]

By a person consenting to act under a mukhtarnama, and attaching his name in token of such consent, he does not become a maker of the mukhtarnama, or a forger, if the mukhtarnama turns out to be forged. It is the duty of the Judge to notice to the assessors discrepancies and contradictory statements made by the witnesses.—Queen v. Burjo Bariok and others, 5 W. R. 70. [Jackson and Glover, JJ. April 16, 1866.]

WHEN a Civil Court sends a prisoner before a Magistrate on a charge of forgery, it is competent to the Magistrate to commit the prisoner for trial on a charge, either of forgery, or of using as genuine a false document, or of abetting forgery.—Queen v. Mohesh Chunder Acharjee and another, 6 W. R. 20. [Norman and Campbell, JJ. July 7, 1866.]

THE signing of a vakálatnāma in the name of co-decree-holders without their authority to do so, and delivering it to a vakil, with instructions to file a petition stating that the debt had been satisfied, and praying that the case may be struck off the file, is forgery within the meaning of s. 463 of the Penal Code.—Queen v. Gaynee Ram, 6 W. R. 78. [Markby, J. Sep. 27, 1866.]

A PRISONER was charged with having forged pattās A and B, bearing the same date, and adduced in evidence by him in the same suit. No mention of any charge as to pattā B was made in the order of commitment; and the prisoner having been acquitted on an indictment for forging pattā A, it was held by the majority of the Court (Markby, J., dissenting) that the plea of autre-fois acquit was inadmissible on a subsequent trial of the prisoner for forging the pattā B.—Queen v. Dwarkanath Dutt, 7 W. R. 15; 2 Ind. Jur. N. S. 67. [Peacock, C.J., and Kemp and Markby, JJ. Jan. 23, 1867.]

THE sanction for prosecution mentioned in the Criminal Procedure refers to those cases only where a forged document has been put in evidence in a Civil or Criminal Court; but in other case a Magistrate is competent, *proprio motu*, to enquire into allegations of forgery, and no sanction is necessary.—Queen v. Ramdharry Singh and another, 10 W. R. 5. [Loch and Glover, JJ. June 6, 1868.]

A CONVICTION for forgery under the Penal Code cannot be had unless it is proved that the accused *himself* made a document, or part of a document, with the intention of causing it to be believed that such document, or part of a document, was made by the authority of a person by whose authority he knew that it was not made.—Queen v. Ram Gopal Dhur, 10 W. R. 7. [Phear and Hobhouse, JJ. June 23, 1868.]

THE offence of altering one part of a document executed in two parts for the mutual security of both the parties concerned deserves to be severely punished.—Queen v. Kissoore Mohun Dutt and others, 17 W. R. 58. [Bayley and Mitter, JJ. May 6, 1872.]

HELD that where a person's object was to deceive his employer by falsifying account-books which were in his custody, such deception being likely to cause damage to his employer, he was rightly convicted under s. 460 of forgery with intent to cheat instead of under s. 465 of simple forgery.—Queen v. Banessur Biswas, 18 W. R. 46. [Bayley and Mitter, JJ. Sep. 5, 1872.]

A CIVIL Court has no power to order the commitment of persons for offences under ss. 471, 465, and 193 of the Penal Code without holding the preliminary inquiry required by s. 474 of the Criminal Procedure Code (Act X. of 1872), corresponding with s. 478 of the new Code of Criminal Procedure (Act X. of 1882).—Queen v. Bungatoonee and others, 22 W. R. 52. [Markby and Mitter, JJ. Aug. 5, 1874.]

WHERE a clerk, who had committed criminal breach of trust, subsequently made false entries in an account-book, with the intention of concealing such offence, *held* that the making of such entries did not constitute the offence of forgery, and he had therefore been improperly convicted under s. 465 of the Penal Code.—Queen v. Jageshur Pershad (6 N. W. P. 56) and Queen v. Lal Gumul (2 N. W. P. 11) followed.—Empress v. Jiwanand, I. L. R., 5 All. 221. [Mahmood, J. Oct. 5, 1882.]

IN a suit on a bond, instituted in the Court of a Munsif, the question whether the defendant had executed the bond or not was referred to arbitration. The arbitrator decided that the defendant had not executed the bond, and that it was a forgery. The Munsif dismissed the suit in accordance with the award. The defendant then applied to the Munsif for sanction to prosecute the plaintiff without specifying in his application the offences in respect of which he desired to prosecute. The Munsif granted sanction, merely

observing that there were sufficient grounds for sanctioning the prosecution, without giving any reasons or specifying the offence or offences in respect of which sanction was granted. *Held* that the terms in which the Munsif had given his sanction to a prosecution were not sufficiently explicit, and that he should have mentioned the section or sections of the Penal Code under which he authorized criminal proceedings to be taken, as also in a general way the offence or offences to be charged, the date of commission, and the place where committed. Further, that as the Munsif himself had not determined the question of forgery in the suit he should have made some inquiry to satisfy himself that there were materials to justify a prosecution.—In the Matter of the Petition of Parsotam Lal v. Bijai, I. L. R., 6 All. 101. [Straight, J. Oct. 23, 1883.]

SANCTION was granted to prosecute a defendant for forgery and perjury alleged to have been committed by him in a civil suit which was decided against him on the 22nd August 1882. The defendant then preferred an appeal, which was dismissed on the 9th August 1883. The plaintiff commenced criminal proceedings against the defendant, under the sanction, on the 23rd July 1884; but such proceedings having been commenced more than six months after the date of the sanction, the charge was dismissed. The plaintiff then, on the 20th August 1884, applied for a fresh sanction, which was granted on the 13th April 1885. *Held* that, assuming that the Munsif who granted the fresh sanction had power to do so, as to which the Court expressed no opinion, such fresh sanction should not have been granted unless some explanation was given for the omission to commence proceedings within six months; and as no such explanation was given, or any special grounds shown why a fresh sanction should be given, the Munsif did not exercise a sound discretion in granting such fresh sanction, and consequently his order was set aside.—Joydeo Singh v. Harihar Pershad Singh, I. L. R., 11 Cal. 577. [Mitter and Norris, JJ. May 22, 1885.]

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**466:** Whoever forges a document purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage, or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

A CONVICTION may be had for using as genuine a forged document, purporting to be made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon.—Queen v. Prosunno Bose and others, 5 W. R. 96. [Norman and Campbell, JJ. May 28, 1866.]

THE subsequent falsification of a roznamcha-bahi kept in the office of a Deputy-Inspector of Schools by the muharar in charge thereof for the purpose of concealing frauds previously committed, merely with a view to avoid disgrace and punishment, was held not to fall within the definition of forgery as given in the Penal Code.—Queen v. Jageshur Pershad, 6 N. W. P. 56. [Pearson, J. Dec. 20, 1873.]

S. 35 of the Evidence Act, which provides "that any entry in an official public book, which is duly made by a public servant in the execution of his duty, is of itself a relevant fact," does not make the public book evidence to show that a particular entry has not been made in it. S. 466 of the Penal Code is not intended to apply to cases where a public officer, or a person acting for a public officer, whose duty it is to make entries in a public book, knowingly makes a false entry, but to cases where a certificate or other document is forged by some unauthorized person with a view to make it appear that it was duly issued by a public officer. The accused, in order to save an estate from forfeiture, made a false entry of rent received in a public book kept by him for the purpose of informing the Collector as to the rents which had been paid into the Collectorate and as to what estates the rents were in arrear, so that he might take steps to enforce payment, and was convicted by the Sessions Judge of an offence under s. 465 of the Penal Code. *Held*, on appeal, that the accused ought properly to have been convicted under s. 192 of the Code; the provisions of that section not being confined to false evidence to be used in judicial proceedings.—In the Matter of Juggun Lal, 7 C. L. R. 356. [Garth, C.J., and Field, J. Nov. 17, 1880.]

**467.** Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to the person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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A FRAUDULENT alteration of a collectorate challan is the forgery of a document described in s. 467 of the Penal Code.—*Queen v. Hurish Chunder Bose*, W. R. Sp. 22. [Loch and Jackson, JJ. April 12, 1864.]

THE forging of a document which purports, on the face of it, to be a copy only, and which, even if a genuine copy, would not authorize the delivery of moveable property, is not punishable under s. 467 of the Penal Code. The High Court will not alter a conviction by a Sessions Court aided by a jury, on a charge only triable by a jury, to one of a nature not triable by such a tribunal, but will annul the proceedings, and leave the prosecution to take fresh proceedings against the prisoner on any other charge it may be advised.—*Reg. v. Naro Gopal*, 5 Bom. H. C. R. 56. [Warden and Gibbs, JJ. July 22, 1868.]

THE prisoner was charged, under s. 471 of the Penal Code, with fraudulently using as genuine a forged document, and, having been tried before a Sessions Judge and jury, was convicted of that offence. The Sessions Judge, considering the forged document to be of the nature of those specified in s. 467, sentenced the prisoner to ten years' transportation. On appeal, the High Court held that the charge should have distinctly set forth the offence as that of using a forged document of the nature of those specified in s. 467, and that, that not having been done, the trial by jury was illegal. The conviction and sentence were therefore annulled, and it was directed that the prisoner should be retried.—*Reg. v. Gangaram Malji*, 6 Bom. H. C. R. 43. [Warden and Gibbs, JJ. June 24, 1869.]

WHERE prisoner, to screen his own negligence, altered an office-report, such conduct does not fall within the definition of forgery in the Penal Code.—*Queen v. Lal Gumul*, 2 N. W. P. 11. [Turner and Spankie, JJ. Jan. 10, 1870.]

A, INTENDING to procure a forged document purporting to be executed by one Chotak, applied to K to accompany A to Gorakhpur, where A said Chotak would be found, and there to draw out a bond for execution by Chotak. In pursuance of this invitation, K, believing that Chotak would execute the bond, accompanied A to Gorakhpur. A took with him his ploughman, named Chetoo, and directed Chetoo to purchase a stamp-paper for the bond, and to give his name and description to the stamp-vendor as Chotak. Chetoo complied with this direction, and the stamp-vendor wrote on the stamp-paper an endorsement to the effect that the purchaser was Chotak, with the description which would apply to that person, but, suspecting false personation, arrested Chetoo, and took him to the Magistrate. On the above facts, the Sessions Judge convicted A of attempt to forge a valuable security, and, under ss. 467 and 511, sentenced him to be rigorously imprisoned for five years. Held that to constitute the offence of attempt under s. 511, Penal Code, there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence. The provisions of s. 511, Penal Code, do not extend to make punishable as attempts acts done in the mere stage of preparation. Although such are doubtless done towards the commission of the offence, they are not done in the attempt to commit the offence within the meaning of the word "attempt" as used in the section.—*Queen v. Ramsaran Chowhey*, 4 N. W. P. 46. [Turner, J. Mar. 13, 1872.]

THE accused, in order to obtain a recognition from a settlement-officer that they were entitled to the title of "luskur," filed a *sanad* before that officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under ss. 471, 461 of the Penal Code. Held on appeal that, even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to

any one; their intention being to produce a false belief in the mind of the settlement-officer that they were entitled to the dignity of "luskur," and that this could not be said to constitute "an intention to defraud." A *sanad* conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code.—*Jan Mahomed and Jabar Mahomed v. Queen-Empress*; *Waris Meah v. Queen-Empress*, I. L. R., 10 Cal. 584. [Mitter and Norris, JJ. April 17, 1884.]

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Not bailable.  
Not comp.

**468.** Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**HELD** that, where a person's object was to deceive his employer by falsifying account-books which were in his custody, such deception being likely to cause damage to his employer, he was rightly convicted under s. 468 of forgery with intent to cheat, instead of under s. 465 of simple forgery.—*Queen v. Banessur Biswas*, 18 W. R. 46. [Bayley and Mitter, JJ. Sep. 5, 1872.]

**THE** accused was charged with cheating by falsely and incorrectly reading out to an *otroi dárogha* the contents of an invoice of a consignment of goods, and so making the value appear to be less than it actually was; and also with forgery under s. 468, in having afterwards altered the invoice so as to make it correspond with what he had dictated to the *dárogha*. **HELD** that the alteration in the invoice having been made after the offence of cheating was complete, and being made by the accused for the purpose of saving himself or concealing the offence of cheating, a charge under s. 468 was not sustainable.—*Hurmukh Rai v. Crown*, Panj. Rec., No. 15 of 1876.

Ct. of Ses.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

**469.** Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

**WHERE** a draft-petition was prepared with the intention of being used as evidence of a matter, it was held to fall within s. 29 of the Penal Code; and as it contained false statements calculated to injure the reputation of a person, the offence was held to fall within s. 469 of the Penal Code.—*Revision of Proceedings in the Case of Sheefait Ally and others*, 10 W. R. 61; 2 B. L. R. A. Cr. 12. [Loch and Glover, JJ. Dec. 14, 1868.]

**470.** A false document made wholly or in part by forgery is designated "a forged document."

**THE** vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration, they used the deed of sale as evidence in a suit. **HELD** that the alteration of the deed did not amount to "forgery" within the meaning of s. 468 of the Penal Code, nor could the deed, after the alteration, be designated a "forged document" as contemplated by s. 470, the intention to cause wrongful loss or wrongful gain or to defraud being wanting; nor could it be said that, in using the deed, the vendees were "dishonestly" or "fraudulently" using as genuine a "forged document," and therefore the use by the vendees of the deed did not constitute an offence under s. 471 of the Penal Code. Further, that their use of it did not render them liable to conviction under s. 196 of that Code.—*Empress v. Fateh*, I. L. R., 5 All. 217. [Mahmood, J. Oct. 2, 1882.]

Ct. of Ses.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

\* When the forged document is a pro. not of the Govt. of India, the offence is cognizable and non-bailable.

**471.** Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished\* in the same manner as if he had forged such document.

**WHERE** a forged document is put in evidence before the Collector, the power of commitment rests with the Revenue Authorities, and does not, under any circumstances, extend to the Magistrate.—*Govt. v. Hungessur Sein*, Ind. Jur. O. S. 11. [Steer, J. July 28, 1862.]

On. XVIII.] OFFENCES RELATING TO DOCUMENTS, &c. [SEC. 471.

COUNTERFEIT seals and forged documents were found in the prisoner's possession, and as he could give no satisfactory information as to how he became possessed of them, it was inferred that he kept them with the intention of using them fraudulently.—Queen v. Kisto Soonder Deb, 2 W. R. 5. [Kemp and Glover, JJ. Jan. 10, 1865.]

THE offence of uttering forged documents requires in this country to be punished with the severest punishment allowed by law. Contemporaneous sentences are not justified by the Penal Code.—Queen v. Mohesh Chunder Sircar, 3 W. R. 13. [Glover, J. May 15, 1865.]

A CONVICTION may be had for using as genuine a forged document purporting to have been made by a public servant in his official capacity, notwithstanding the illegibility of the seal and signature thereon.—Queen v. Prossunno Bose and others, 5 W. R. 96. [Norman and Campbell, JJ. May 28, 1866.]

A PERSON may be convicted of using as genuine a document which he knew to be forged, though he in the first instance produced only a copy of a copy of it.—Queen v. Nujum Ali, 6 W. R. 41. [Jackson and Markby, JJ. July 9, 1866.]

WHERE a prisoner produced as evidence an account-book, one page of which had been fraudulently abstracted, and another substituted for it, *held* that he was not guilty of the offence of attempting to use as genuine fabricated evidence, unless he knew of the forgery, and intended to use the forged evidence for the purpose of affecting the decision on the point at issue when the book was tendered.—Queen v. Muddoo Soodun Shaw, 7 W. R. 23. [Kemp and Markby, JJ. Jan. 26, 1867.]

WHERE an intention to use a forged document, if necessary, was inferred from the facts of the case and from the conduct of the prisoner.—Queen v. Hatim Moonshree *alias* Mahomed Hatim, 8 W. R. 11. [Seton-Karr and Macpherson, JJ. June 8, 1867.]

THERE must be a fraudulent and dishonest using of a document as genuine before a conviction can be had under s. 471 of the Penal Code.—Queen v. Jahan Bux, 8 W. R. 81. [Kemp and Glover, JJ. Nov. 19, 1867.]

IN a case in which the accused was charged with dishonestly using as genuine a patta which he knew to be forged, and in which there was a fraudulent insertion, it was held that it was not necessary to prove that he personally inserted the word, but it was sufficient if it was inserted with his knowledge.—Queen v. Hemaruddi Mundul, 9 W. R. 22. [Kemp and Jackson, JJ. Mar. 2, 1868.]

A DEED of divorce is a "valuable security" within the meaning of s. 30 of the Penal Code. The presenting of a forged document of such a nature for registration, and obtaining registration, would be "using" within s. 471 of that Code.—Queen v. Azimooddeen and another, 11 W. R. 15. [Jackson and Glover, JJ. Mar. 3, 1869.]

THE false alteration of a police-diary by a head-constable was held to fall under s. 471, Penal Code, as the forgery of a document made by a public servant in his official capacity.—Queen v. Rughoo Barrick, 11 W. R. 44. [Norman and Jackson, JJ. May 3, 1869.]

THE prisoner was charged, under s. 471 of the Penal Code, with fraudulently using as genuine a forged document, and, having been tried before a Sessions Judge and jury, was convicted of that offence. The Sessions Judge, considering the forged document to be of the nature of those specified in s. 467, sentenced the prisoner to 10 years' transportation. On appeal, the High Court held that the charge should have distinctly set forth the offence as that of using a forged document of the nature of those specified in s. 467, and that, that not having been done, the trial by jury was illegal. The conviction and sentence were therefore annulled, and it was directed that the prisoner should be re-tried.—Reg. v. Gangáram Malji, 6 Bom. H. C. R. 43. [Warden and Gibbs, JJ. June 24, 1869.]

To support a conviction of the offence under s. 471 of the Penal Code, there must be a using of a document by a person who knows or has reason to believe that it is forged.—Queen v. Bholay Pramanick, 17 W. R. 32. [Kemp and Jackson, JJ. Feb. 20, 1872.]

THE offence imputed against an accused, who, in a civil suit, is alleged to have used as genuine a document which he knew to be a forged document, is one cognizable under s. 471 of the Penal Code. Such accused should, therefore, be charged under that section, and not under s. 196 of the Code.—Empress v. Kherode Chunder Mozumdar, 1. L. R., 5 Cal. 717; 6 C. L. R. 118. [Jackson and Tottenham, JJ. Mar. 2, 1880.]

WHERE the accused were charged under s. 471 of the Penal Code with having, in a suit brought against them by the vendee of their sister to recover possession of certain property acquired by her by right of inheritance from her father, fraudulently and dishonestly used a forged document as genuine knowing or having reason to believe it to be a forged document, it appeared that the accused were in possession of the property, and that the document in question purported to be a deed of gift from their father. It was proved that the endorsement of registration which appeared in the document was a forgery. In his charge to the jury the Sessions Judge omitted to deal with the fact of the accused being in possession of the property. He also directed that, the registration endorsement having been proved to be a forgery, it was for the accused persons to establish the genuineness of the document. *Held* that it was not sufficient for the jury merely to decide on the evidence whether the document was a forgery, and whether the accused knew it was a forgery when they used it, but it was further necessary for the jury to decide whether the document had been used fraudulently and dishonestly. *Held* also that the Sessions Judge, in omitting to deal with the fact of the possession of the accused, and in throwing the *onus* of proving the genuineness of the document upon them, had misdirected the jury.—*Khorshed Kazi and another v. Empress*, 8 C. L. R. 542. [Mitter and Maclean, JJ. May 30, 1881.]

WHERE a person, in the course of an action brought against him to gain possession of a property, uses a forged document for the purpose of supporting his title, though there may be no necessity for the use of it, such a user is clearly fraudulent. A general intention to defraud, without the intention of causing wrongful gain to one person or wrongful loss to another, would, if proved, be sufficient to support a conviction: and such an intention is a necessary inference which the jury should be directed to draw, if they are satisfied that the accused has uttered a forged document as a true one, meaning it to be taken as such, and knowing it to be forged.—In the Matter of Dhunum Kazee, I. L. R., 9 Cal 53; 11 C. L. R. 69. [Maclean and Norris, JJ. July 13, 1882.]

THE vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration, they used the deed of sale as evidence in a suit. *Held* that the alteration of the deed did not amount to "forgery" within the meaning of s. 463 of the Penal Code, nor could the deed, after the alteration, be designated a "forged document" as contemplated by s. 470, the intention to cause wrongful loss or wrongful gain or to defraud being wanting; nor could it be said that, in using the deed, the vendees were "dishonestly" or "fraudulently" using as genuine a "forged document," and therefore the use by the vendees of the deed did not constitute an offence under s. 471 of the Penal Code. Further, that their use of it did not render them liable to conviction under s. 196 of that Code.—*Empress v. Fateh*, I. L. R., 5 All. 217. [Mahmood, J. Oct. 2, 1882.]

THE Court of an Assistant Collector is not subordinate to that of the Magistrate of the District within the meaning of s. 195 of the Criminal Procedure Code. Sanction to prosecution granted under s. 195 should specify the Court or other place in which, and the occasion on which, the offence was committed, and such sanction should not be granted without a preliminary inquiry, where such inquiry is "necessary" within the meaning of s. 476 of the Code. Where sanction to the prosecution of a person for the offence of using certain evidence known to be false was granted by a Court to which the Court in which such evidence was used was not subordinate, and such sanction did not specify the place in which, and the occasion on which, such offence was committed, and the Court granting the sanction did not make any preliminary inquiry, although such an inquiry was "necessary" in the sense of s. 476 of the Criminal Procedure Code, *held* that the indispensable preliminary conditions of s. 195 of the Code being wanting to the prosecution, the committing Magistrate was incompetent to entertain the case, and the commitment was illegal, and should be quashed. *Held* also that the fact that there was not any evidence to connect such person with the use of such false evidence was a defect in law sufficient to justify the quashing of the commitment.—*Empress v. Narotam Das*, I. L. R., 6 All. 98. [Tyrrell, J. Oct. 2, 1883.]

THE accused, in order to obtain a recognition from a Settlement Officer that they were entitled to the title of "Luskur," filed a *sanad* before that officer purporting to grant that title. This document was found not to be genuine. The Sessions Judge convicted the accused under ss. 471 and 464 of the Penal Code. *Held* on appeal that, even supposing the accused had used the document knowing it not to be genuine, they could not be found guilty, as the intention of the accused was not to cause wrongful gain or wrongful loss to any one; their intention being to produce a false belief in the mind of the Settlement

## CH. XVIII.] OFFENCES RELATING TO DOCUMENTS, &c. [SEC. 472.

Officer that they were entitled to the dignity of "Luskur," and that this could not be said to constitute an "intention to defraud." A sanad conferring a title of dignity on a person is not a valuable security within the meaning of the Penal Code.—*Jan Mahomed and Jabar Mahomed v. Queen-Empress : Warris Meah v. Queen-Empress*, I. L. R., 10 Cal. 584. [Mitter and Norris, JJ. April 17, 1884.]

THE creditors of a police-constable applied to the District Superintendent of Police that Rs. 2 might be deducted monthly from the debtor's pay until the debt was satisfied. Upon an order being passed directing that the deduction asked for should be made, the debtor produced a receipt purporting to be a receipt for Rs. 18, the whole amount due. It subsequently appeared that the receipt was one for Rs. 8, which the debtor had altered by adding the figure "1," so as to make it appear that the receipt was for Rs. 18. *Held* that the real intent in the prisoner's mind being to induce his superior officer to refrain from the illegal act of stopping a portion of his salary, the Court in a criminal case ought not to speculate as to some other intent over and above this that might have presented itself to him; that it did not necessarily follow that he contemplated setting up the altered receipt to defeat his creditor's claim; and that therefore he ought not to have been convicted of an offence under s. 471 of the Penal Code.—*Queen-Empress v. Syed Husain*, I. L. R., 7 All. 403. [Petheram, C.J., and Straight, J. Feb. 27, 1885.]

IN a trial upon a charge, under s. 471 of the Penal Code, of fraudulently or dishonestly using as genuine documents known to be forged, it was found that four forged receipts for the payment of rent, used by the prisoner, had been fabricated in lieu of genuine receipts which had been lost. *Held* that, with reference to the definitions of the terms "dishonestly" and "fraudulently" in ss. 24 and 25 of the Penal Code, the prisoner, upon the facts as found, had not committed the offence punishable under s. 471.—*Queen-Empress v. Sheo Dayal*, I. L. R., 7 All. 459. [Brodhurst, J. Mar. 6, 1885.]

ON the 2nd August 1884, a Munsif, who was of opinion that, in the course of a suit which had been tried before him, certain persons had committed offences under ss. 193, 463, and 471 of the Penal Code, and that the prosecution of these persons was desirable, made an order which he described as passed under s. 643 of the Civil Procedure Code, and in which he directed that the accused should be sent to the Magistrate, and that the Magistrate should inquire into the matter. In May 1885, upon an application by one of the accused to the District Court to "revoke the sanction for prosecution granted by the Munsif," it was contended that the "sanction" had expired on the 2nd February 1885, and had ceased to have effect. *Held* by the Full Bench that the Munsif's order, whether it was or was not a sanction, was a sufficient "complaint" within the meaning of s. 195 of the Criminal Procedure Code, and that the limitation period prescribed by that section was applicable to the case. *Per* Petheram, C.J., and Straight, J.—That, considering that s. 643 of the Civil Procedure Code was closely similar to s. 476 of the Criminal Procedure Code, the Munsif's order might be taken as having been passed under the latter section. Also *per* Petheram, C.J., and Straight, J.—The words in s. 195 of the Criminal Procedure Code, "except with the previous sanction or on the complaint of the public servant concerned," must be read in connection with s. 476, which was enacted with the object of avoiding the inconvenience which might be caused if a Munsif, or a Subordinate Judge, or a Judge, were obliged to appear before a Magistrate, and make a complaint on oath, like an ordinary complainant, in order to lay the foundation for a prosecution. The language of s. 476 indicates that where a Court is acting under s. 195, a complaint in the strict sense of the Code is not required, and that the procedure therein laid down constitutes the "complaint" mentioned in s. 195.—*Ishri Prosad v. Sham Lal*, I. L. R., 7 All. 871. [Petheram, C.J., and Straight, Brodhurst, and Tyrrell, JJ. July 4, 1885.]

### 472. Whoever makes or counterfeits any seal, plate, or other instrument

Making or possessing counterfeit seal, &c., with intent to commit a forgery punishable under section 467.

for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467, or with such intent has in his possession any

such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Ct. of Ses.  
Uncog.  
Warrant.  
Not bailable.  
Not comp.



Ct. of Ses.  
Uncoog.  
Warrant.  
Not bailable.  
Not comp.

**473.** Whoever makes or counterfeits any seal, plate, or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or with such intent has in his possession any such seal, plate, or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COUNTERFEIT seals and forged documents were found in the prisoner's possession; and as he could give no satisfactory information as to how he became possessed of them, it was inferred that he kept them with the intention of using them fraudulently.—*Queen v. Kristo Soonder Deb*, 2 W. R. 5. [Kemp and Glover, JJ. Jan. 10, 1865.]

A PERSON who uses in Court false documents as true, besides swearing to their authenticity, may be convicted under s. 196 of the Penal Code only, and not under s. 471 also.—*Queen v. Oodun Lall*, 3 W. R. 17. [Glover, J. May 23, 1865.]

WHERE several seals of different descriptions were found in the possession of the accused with intent to commit forgery, it was held that under s. 473 of the Penal Code there was a complete and separate offence committed in respect of every seal found, and that the prisoners could be legally convicted of a separate offence in regard to each seal, unless it appeared that several such seals were in their possession for the purpose of committing one particular forgery.—*Queen v. Goluck Chunder* and another, 13 W. R. 16. [Jackson and Markby, JJ. Jan. 18, 1870.]

Ditto.

**474.** Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and; if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

It is not sufficient for a conviction, under s. 474 of the Penal Code, to say that the prisoner might possibly have used an altered document. The guilty intent must be proved, not inferred.—*Queen v. Lokenath Shaha*, W. R. Sp. 12. [Steer and Seton-Karr, JJ. Feb. 22, 1864.]

Ditto.

**475.** Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document described in section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

IN order to a conviction under s. 475 of the Penal Code, the document which the accused has in his possession must have some counterfeit device or mark upon it, and it must be proved that the accused has the document in his possession with the intent of using such device or mark for the purpose of giving the appearance of authenticity to the docu-

ment. The document must be of the nature mentioned in s. 467 of the Penal Code.—*Queen v. Rughoonundun Pattronuvees*, Appellant, 15 W. R. 19. [Kemp and Glover, JJ. Feb. 18, 1871.]

**476.** Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document other than the documents described in section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting a device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

**477.** Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes or attempts to secrete, any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulent cancellation, destruction, &c., of a will.

Ditto.

THE tearing up of a pattá is the destruction of a valuable security within the meaning of s. 477, Penal Code.—*Queen v. Nitar Mundle*, 3 W. R. 38. [Steer, J. July 4, 1865.]

THE fact that a document has not been stamped, and is not, therefore, receivable in evidence, does not prevent its being a "valuable security" within the meaning of s. 477 of the Penal Code.—*Pro.*, Aug. 5, 1873, 7 Mad. H. C. R. Ap. 26.

## OF TRADE AND PROPERTY-MARKS.

**478.** A mark used for denoting that goods have been made or manufactured by a particular person or at a particular time or place, or that they are of a particular quality, is called a trade-mark.

Trade-mark.

**479.** A mark used for denoting that moveable property belongs to a particular person is called a property-mark.

Property-mark.

**480.** Whoever marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, with the intention of causing it to be believed that the goods so marked, or any goods contained in any such case, package, or receptacle so marked, were made or manufactured by any person by whom they were not made or manufactured, or that they were made or manufactured at any time or place at which they were not made or manufactured, or that they are of a particular quality of which they are not, is said to use a false trade-mark.

Using a false trade-mark.

**481.** Whoever marks any moveable property or goods, or any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or

Using a false property-mark.

other receptacle having any mark thereon, with the intention of causing it to be believed that the property or goods so marked, or any property or goods contained in any case, package, or other receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

**482.** Whoever uses any false trade-mark or any false property-mark with intent to deceive or injure any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Ditto.

**483.** Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any trade or property-mark used by any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class. -  
Uncog.  
Summons.  
Bailable.  
Not comp.

**484.** Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any property-mark used by a public servant, or any mark used by a public servant to denote that any property has been manufactured by a particular person or at a particular time or place, or that the same is of a particular quality, or has passed through a particular officer, or that it is entitled to any exemption, or uses as genuine any such mark knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Ditto.

**485.** Whoever makes or has in his possession any die, plate, or other instrument for the purpose of making or counterfeiting any public or private property or trade-mark, with intent to use the same for the purpose of counterfeiting such mark, or has in his possession any such property or trade-mark, with intent that the same shall be used for the purpose of denoting that any goods or merchandise were made or manufactured by any particular person or firm by whom they were not made, or at a time or place at which they were not made, or that they are of a particular quality of which they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Summons.  
Bailable.  
Not comp.

**486.** Whoever sells any goods with a counterfeit property or trade-mark, whether public or private, affixed to or impressed upon the same, or upon any case, wrapper, or receptacle in which such goods are packed or contained, knowing that such mark is forged or counterfeit, or that the same has been affixed to, or impressed upon, any goods or merchandise not manufactured or made by the person or at the time or place indicated by such mark, or that they are not of the quality indicated by such mark, with intent to deceive, injure, or damage any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

## CHAP. XIX.] BREACH OF CONTRACTS OF SERVICE. [SECS. 487-490.

**487.** Whoever fraudulently makes any false mark upon any package or receptacle containing goods, with intent to cause any public servant or any other person to believe that such package or receptacle contains goods which it does not contain, or that it does not contain goods which it does contain, or that the goods contained in such package or receptacle are of a nature or quality different from the real nature or quality thereof, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

*Penalty:* Ct. of Ses., Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

**488.** Whoever fraudulently makes use of any such false mark with the intent last aforesaid, knowing such mark to be false, shall be punished in the manner mentioned in the last preceding section.

*Penalty:* Ditto.

**489.** Whoever removes, destroys, or defaces any property-mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Penalty:* Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Not comp.

## CHAPTER XIX.

### OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

**490.** Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

*Penalty:* Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Summons. Bailable. Comp.

#### *Illustrations.*

(a.) A, a palanquin-bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(b.) A, a cooly, being bound by lawful contract to carry Z's baggage from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(c.) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.

(d.) A, by unlawful means, compels B, a cooly, to carry his baggage. B in the course of the journey puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

*Explanation.*—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

*Illustration.*

A contracts with a dâk company to drive his carriage for a month. B employs the dâk company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A in the course of the journey voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

S. 490 does not apply to servants hired by the month, and under a continuing implied contract to serve until the engagement is terminated by a month's notice.—Rulings of the Mad. H. C., 1864, on s. 490.

AN agreement for personal service in conveying indigo from the field to the vats is not a contract, the breach of which is punishable by s. 490 of the Penal Code.—Nowa Tewaree and another, 6 W. R. 80. [Kemp and Pundit, JJ. Oct. 3. 1866.]

*Quære.*—Whether the words, “during a voyage or journey,” in s. 490 of the Penal Code, do not limit the offences made under that section to offences against travellers. That section, however, does not apply to a contract to place the defendant's carts at the complainant's disposal for a specified time to convey a thing from where he pleases to where he pleases.—*Sage v. Nirunjun Chatterjee*, 9 W. R. 12. [Kemp and Jackson, JJ. Feb. 3, 1868.]

IN *Unwin v. Clarke*, 1 L. R. Q. B. 417, the contract was held not to be terminated by conviction and punishment; but the Calcutta High Court has ruled the contrary.—2 Rev., Jud., and Pol. Jour. 24.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Summons.  
Bailable.  
Comp.

**491.** Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or a disease or bodily weakness, is helpless or incapable of providing for his own safety, or of supplying his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

THE Indian Law Commissioners give the following reasons for framing the above section: “Persons who contract to take care of infants, of the sick and helpless, lay themselves under an obligation of a peculiar kind, and may, with propriety, be punished, if they omit to discharge their duty. They generally come from the lower ranks of life, and would be unable to pay anything. They therefore proposed to add to this class of contracts the sanction of the penal law.”

Ditto.

**492.** Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman, or labourer, for a period not more than three years, at any place within British India, to which, by virtue of the contract, he has been, or is to be, conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both; unless the employer has ill-treated him, or neglected to perform the contract on his part.

S. 492, which makes it an offence for “an artificer, workman, or labourer” to break his contract of service under the circumstances specified in the section, does not apply to domestic servants.—*Crown v. Kallu*, Panj. Rec., No. 20 of 1876.

WHERE a labourer has once been punished under s. 492, it has been held that his refusal to fulfil the terms of the contract on his release from imprisonment does not render him liable to a second punishment.—2 Rev. Jud. and Pol. Journal. 24.

## CHAPTER XX.

### OF OFFENCES RELATING TO MARRIAGE.

**493.** Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

Ct. of Ses. Uncog. Warrant. Not bailable. Not comp.

A HINDU Christian convert relapsing into Hinduism, and marrying a Hindu woman, cannot be convicted of bigamy on the ground that he has another wife living whom he married while a professing Christian.—*Pro.*, Nov. 8, 1866, 3 Mad. H. C. R. Ap. 7. [Holloway and Innes, JJ. Nov. 8, 1866.]

MARRIAGE must be presumed from the fact of a man and woman living together and from their own evidence (altogether un rebutted) that she is his legally married wife.—*Queen v. Wuzerah* and another, 17 W R 5; 8 B. L. R. Ap. 63. [Loch and Ainslie, JJ. Jan. 6, 1872.] Overruled by *Empress v. Pitambur Singh*, I. L. R., 5 Cal. 566; 5 C. L. R. 597, *infra*.

THE provisions of s. 50 of the Evidence Act show that, where marriage is an ingredient in an offence, as in bigamy, adultery, and the enticing of married women, the fact of the marriage must be strictly proved.—*Empress v. Pitambur Singh*, I. L. R., 5 Cal. 566; 5 C. L. R. 597. [Garth, C.J., and Jackson, Pontifex, Morris, and McDonell, JJ. Dec. 8, 1879.] Follows *Queen v. Smith*, 4 W. R. 31. Overrules *Queen v. Wazira*, 17 W. R. 5; 8 B. L. R. Ap. 63. Discussed in *Queen-Empress v. Subbarayan*, I. L. R., 9 Mad. 9. Followed in *Empress of India v. Kallu*, I. L. R., 5 All. 233; *Empress v. Arshed Ali*, 13 C. L. R. 125.

SECTION 50 of the Evidence Act (I. of 1872) runs as follows:

When the Court has to form an opinion as to the relationship of one person to another, the opinion, expressed by conduct, as to the existence of such relationship, of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is a relevant fact; provided that such opinion shall not be sufficient to prove a marriage in proceedings under the Indian Divorce Act, or in prosecutions under s. 494, 465, 497, or 498 of the Indian Penal Code.

#### Illustrations.

(a.) The question is, whether A and B were married.

The fact that they were usually received and treated by their friends as husband and wife is relevant.

(b.) The question is, whether A was the legitimate son of B. The fact that A was always treated as such by members of the family is relevant.

**494.** Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Marrying again during life-time of husband or wife.

Ct. of Ses. Uncog. Warrant. Bailable. Not comp.

*Exception.*—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts, so far as the same are within his or her knowledge.

A MAHOMEDAN, having four lawful wives alive and undivorced, commits bigamy when he marries a fifth.—Mac. M. Law, p. 255.

HELD that a custom of the Talapda Koli caste, that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage (natra) with another man during the lifetime of her first husband and without his consent, was invalid, as being entirely opposed to the spirit of the Hindu law; and that such marriage was "void by reason of its taking place during the life of such husband," and, therefore, punishable, as regards the woman, under s. 494 of the Penal Code; and that the man with whom the woman so married, having had sexual intercourse with her, and it being found that he did not honestly believe that she had become his wife, was guilty of adultery under s. 497.—Reg. v. Karsan Goja; Reg. v. Bai Rupa, 2 Bom. H. C. R. 117. [Forbes and Couch, JJ. April 22, 1864.]

A HINDU Christian convert relapsing into Hinduism, and marrying a Hindu woman, cannot be convicted of bigamy on the ground that he has another wife living whom he married while a professing Christian.—Pro., Nov. 8, 1866, 3 Mad. H. C. R. Ap. 7. [Holloway and Innes, JJ. Nov. 8, 1866.]

A NIKA-MARRIAGE falls within the purview of ss. 494 and 495; it is a well-known and well-established form of marriage amongst Mahomedans.—Queen v. Juddo Mussulmanee and another, 6 W. R. 60. [Seton-Karr, J. Aug. 27, 1868.] And the issue of a nika-marriage would be legitimate under the Mahomedan law.—Sheikh Moncerooddeen v. Ramdhun Bajeekur and others, 18 W. R. 28. [Kemp and Glover, JJ. July 17, 1872.]

ON a trial for bigamy, the defence was that the marriage of the woman (the accused) with the prosecutor was null and void, as the woman was a minor at the time, and married without the consent of her relations. She was a widow when she married the prosecutor. *Held* that her marriage with the prosecutor was legal.—Madha v. Mussammat Jeeewee, Panj. Rec., No. 2 of 1869.

HELD, on a trial for bigamy, that the apostacy of a Hindu wife does not dissolve the marriage-union.—Crown v. Mussammat Gholam Fatima, Panj. Rec., No. 32 of 1870.

COURTS of law will not recognize the authority of a caste to declare a marriage void, or to give permission to a woman to re-marry. *Bond fide* belief that the consent of the caste made the second marriage valid does not constitute a defence to a charge, under s. 494 of the Penal Code, of marrying again during the life-time of the first husband, or to a charge of abetment of that offence under that section combined with s. 109.—Reg. v. Sambhu Raghun, I. L. R., 1 Bom. 347. [Melvill and Nánábhái Haridás, JJ. Sep. 7, 1876.]

IF the first marriage is valid, it is bigamy to marry again (*i.e.*, to go through a form of marriage known to the law as capable of producing a valid marriage), though the second marriage be void on another ground besides that of its being bigamous.—Gurbaksh Singh v. Shama Singh, Panj. Rec., No. 19 of 1876.

A MAHOMEDAN guardian of a married female infant, who, while her husband is living, causes a marriage ceremony to be gone through in her name with another man, but without her taking any part in the transaction, does not commit the offence of abetment under ss. 109 and 494 of the Penal Code. The practice of instituting criminal proceedings with a view to determining disputes arising in cases of this class condemned.—In the Matter of the Empress v. Abdool Kurreem, I. L. R., 4 Cal. 10. [White and Prinsep, JJ. July 9, 1878.]

A CRIMINAL Court is bound to decide the question of marriage when it is essential to the decision of the question whether an offence has been committed or not. The doctrine of a certain school of Muhammadan divines in regard to the competency of a woman to marry again after the absence of her husband for four years does not entitle a woman so re-marrying to the benefit of the exception to s. 494.—Alam Shah v. Jewan, Panj. Rec., No. 57 of 1878.

THE accused were charged before a Magistrate of the First Class with enticing away a married woman (s. 498). The inquiry having shown that an offence under s. 494 had apparently been committed, the proceedings were forwarded under s. 45, Criminal Procedure Code (corresponding with s. 346, Act X. of 1882), for disposal to the Magistrate of the District, who tried the case *de novo*, and convicted the accused under ss. 109 and 494. *Held* that the preferring a complaint was an essential condition of the Magistrate's jurisdiction to inquire into and try an offence falling under ch. 20 of the Penal Code, and

the extent of the jurisdiction so founded was limited to offences covered by the facts complained of; that there had been no complaint of an offence under s. 494; and that the conviction was therefore illegal. *Held* also that the Magistrate before whom the complaint was made of an offence under s. 498 had jurisdiction to try it, and therefore that it was not competent for him to proceed under s. 45, Criminal Procedure Code (corresponding with s. 346, Act X. of 1882).—*Faiz Ahmed v. Empress*, Panj. Rec., No. 5 of 1879.

THE conversion of a Hindú wife to Mahomedanism does not, *ipso facto*, dissolve her marriage with her husband; she cannot, therefore, during his lifetime, enter into any other valid marriage-contract. Her going through the ceremony of nika with a Mahomedan is consequently an offence under s. 491 of the Penal Code.—*Govt. of Bombay v. Ganga*, I. L. R., 4 Bom. 330. [Pinhey and Melvill, JJ. Jan. 29, 1880.]

A CONVICTION under s. 494 of the Penal Code for marrying again during the lifetime of a husband or wife cannot be upheld where there is evidence to show that such marriages are not unusual among persons of the same caste as the accused, and it is not proved that such marriages are void.—In the Matter of Mussamut Chamia, 7 C. L. R. 354. [Garth, C.J., and Field, J. Nov. 23, 1880.]

A MEMBER of the caste of Ajanyá Rájput Guzars, residing in Khándesh, executed a deed of divorce to his wife. The Court held on the evidence that the deed was proved, and that in this caste a husband was, for a sufficient reason, such as incontinence, allowed to divorce his wife; that the deed in the present case had not been executed for a sufficient reason; and that, consequently, the parties entering into a second marriage were guilty of an offence under s. 494 of the Penal Code, and that the priest who officiated at that marriage was an abettor under ss. 494 and 109. Mere consent of persons to be present at an illegal marriage, or their presence in pursuance of such consent, or the grant of accommodation in a house for the marriage, does not necessarily constitute abetment of such marriage.—*Empress v. Umi*, I. L. R., 6 Bom. 126. [Melvill and Kemball, JJ. Jan. 11, 1882.]

WHERE the wife of a lunatic was prosecuted for bigamy on the complaint of the lunatic's brother, *held* that the complainant, merely as brother of the lunatic, was not a "person aggrieved by such offence" within the meaning of s. 198 of the Criminal Procedure Code (Act X. of 1882), and that the complaint could not be entertained.—*Queen-Empress v. Bai Rukshmoni*, I. L. R., 10 Bom. 340. [Birdwood and Jardine, JJ. Jan. 21, 1886.]

#### 495. Whoever commits the offence defined in the last preceding section,

Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.

having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ct. of Ses.  
Uncog.  
Warrant.  
Not bailable.  
Not comp.

A WOMAN, who does not use all reasonable means in her power to inform herself of the fact of her first husband's alleged demise, and contracts a second marriage within 16 months after cohabitation with her first husband without disclosing the fact of the former marriage to her second husband, is liable to enhanced punishment under s. 495, Penal Code.—*Queen v. Enai Beebe*, 4 W. R. 25. [Loch, Kemp, and Glover, JJ. Nov. 20, 1865.]

A NIKA-MARRIAGE falls within the purview of ss. 494 and 495 of the Penal Code. It is a well-known and well-established form of marriage amongst Mahomedans.—*Queen v. Judoo Mussulmanee* and another, 6 W. R. 60. [Seton-Karr, J. Aug. 27, 1866.]

THE nika form of marriage is well known and established among Mahomedans. The issue of a nika-marriage would be legitimate under the Mahomedan law.—*Sheik Moneer-roodeen v. Ramdhun Bajeekur* and others, 18 W. R. 28. [Kemp and Glover, JJ. July 18, 1872.]

THE act of causing the publication of banns of marriage is an act done in the preparation to marry, but does not amount to an attempt to marry. Where, therefore, a man, having a wife living, caused the banns of marriage between himself and a woman to be published, he could not be punished for an attempt to marry again during the lifetime of his wife.—*Reg. v. Peterson*, I. L. R., 1 All. 316. [Pearson, J. Dec. 6, 1876.]



THE elder paternal uncle of a Mahomedan girl, a minor, disposed of her in marriage, after he knew she had previously been given in lawful marriage by his younger brother. *Held* that the act did not, *per se*, constitute a criminal offence, even though the second marriage were valid, it appearing that the accused was the only person concerned in the second marriage who knew of the first, and that the girl was not present. A and B were indicted under ss. 109 and 495 of the Penal Code—A for giving his niece (a minor) in marriage, she being then married, and B for aiding therein. The girl was not present at the marriage, and there was no evidence to show A had conspired with any person but B, whom the jury acquitted. *Held* that the acquittal of B involved the acquittal of A.—*Abdool Kurreem v. Empress*, 3 C. L. R. 81. [White and Prinsep, JJ. July 19, 1878.]

**496.** Whoever dishonestly or with a fraudulent intention goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

PROOF of dishonest or fraudulent intent is necessary for a conviction under s. 496 of the Penal Code of falsely going through the ceremony of marriage. The mere act of allowing the marriage to take place at one's house does not amount to the abetment of an illegal marriage.—*Queen v. Kudum and others*, W. R. Sp. 13. [Steer and Morgan, JJ. Feb. 24, 1864.]

**497.** Whoever has sexual intercourse with a person who is, and whom he knows, or has reason to believe to be, the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

HELD that a custom of the Talapda Kolf caste, that a woman should be permitted to leave the husband to whom she has been first married, and to contract a second marriage (*nátrá*) with another man during the lifetime of her first husband, and without his consent, was invalid, as being entirely opposed to the spirit of the Hindu law; and that such marriage was "void by reason of its taking place during the life of such husband," and therefore punishable, as regards the woman, under s. 494 of the Penal Code; and that the man with whom the woman so married, having had sexual intercourse with her, and it being found that he did not honestly believe that she had become his wife, was guilty of adultery under s. 497.—*Reg. v. Karsan Goja*, Reg. v. Bái Rupá, 2 Bom. H. C. R. 117. [Forbes and Couch JJ. April 22, 1864.]

A PERSON convicted of adultery under s. 497 of the Penal Code need not be convicted also under s. 498; far less where there is no taking or enticing away of the woman.—*Queen v. Poochun Chung*, 2 W. R. 35. [Kemp and Glover, JJ. Feb. 14, 1865.]

THE offence of adultery may be compounded. In proceedings founded on a charge of adultery, strict proof is necessary of the marriage of the woman with whom adultery is alleged, and the charge should be instituted by the husband of the woman. The Appellate Court will not uphold a conviction for adultery when the husband has shown that he has condoned the offence.—*Queen v. Smith (G. R.)*, 4 W. R. 31; 1 Ind. Jur. N. S. 8. [Kemp and Seton-Karr, JJ. Dec. 5, 1865.]

WHERE the husband of a woman, with whom the accused was alleged to have committed adultery, professed himself unwilling to proceed with the prosecution, and the Assistant Sessions Judge thereupon ordered the accused to be discharged, the Court, in the exercise of its discretion, declined to interfere.—*Reg. v. Rámlo Jerio*, 5 Bom. H. C. R. 27. [Couch, C.J., and Newton, J. Jan. 14, 1868.]

WHERE a person accused of adultery sets up in defence a *nátrá*, contracted with the woman with whom he is alleged to have committed adultery, in accordance with the custom of his caste, the question the Court has to determine is whether or not the accused

*honestly believed*, at the time of contracting the *nātrā*, that the woman was the wife of another man.—*Reg. v. Manohar Rājī*, 5 Bom. H. C. R. 17. [Couch, C.J., and Newton, J. Feb. 22, 1868.]

THE death of the husband does not necessarily put an end to a prosecution for adultery under s. 497 of the Penal Code. The law only requires that the prosecution should be instituted by the husband.—*Pro.*, July 13, 1869, 4 Mad. H. C. R. Ap. 55.

THE accused committed house-trespass with intent to commit adultery. The husband refused to make a charge of house-trespass with intent to commit adultery, but made a charge of house-trespass with intent to commit theft, which was disproved. It was held that the Magistrate had acted rightly in refusing to convict on the charge laid by the husband, though the accused admitted that he had trespassed to carry on an intrigue.—*Pro.*, Nov. 15, 1869, 5 Mad. H. C. R. Ap. 5.

A ENTERED the house of B without the latter's permission, and committed adultery with B's wife. *Held* that A could be separately convicted of and punished for both the adultery and house-trespass, as they were distinct offences; but that, under the circumstances, B's wife was by law incapable of committing abetment of the house-trespass.—*Crown v. Sheikh Munghī*, Panj. Rec., No. 5 of 1871.

WHERE the husband brought a specific complaint for adultery under s. 497, and the Magistrate framed a charge and convicted under s. 498, the Chief Court quashed the conviction.—*Sher Singh v. Crown*, Panj. Rec., No. 18 of 1873.

PROOF of adultery required by a Criminal Court must not be less than that required in a divorce-suit. There must be, where the wife and the alleged adulterer are not caught in the act, evidence of criminal intention and opportunity. And there must be no consent or connivance on the part of the husband.—*Sher Ali v. Crown*, Panj. Rec., No. 1 of 1874.

THE fact that a charge under the Penal Code, s. 497, was triable with assessors, and not by a jury, would not affect the legality of a conviction of adultery before a jury. *Quere*.—Is the formal assent of a husband to a charge of adultery, added at the end of his deposition, a proper compliance with Act X of 1872, s. 478 (corresponding with Act X. of 1882, s. 199)?—*Queon v. Luckhy Narain Nagory*, 24 W. R. 18. [Glover and Mitton, JJ. June 23, 1875.]

THE complainant, a Muhammadan, alleged that he had been married six times; that all the women were living, but that he kept two of the first four partially divorced (*i.e.*, by pronouncing the words of divorce only once or twice, and not thrice) in order to legalize his marriage with the fifth and sixth, and so keep within the law, which permitted him to have four wives. Accused was charged with abducting or committing adultery with complainant's sixth wife. *Held* that the woman in question was not the wife of the complainant. Conviction quashed.—*Rabnawaz Khan v. Crown*, Panj. Rec., No. 1 of 1875.

SAGAI wives, *i.e.*, widows married in accordance with the custom of *Sagai* prevailing amongst the Koirees and other low castes of Behar, are so far the legal wives of either husbands as to justify the punishment of persons committing adultery with them.—*Bissuram Koiree v. Empress*, 3 C. L. R. 410. [Ainslie and Maclean, JJ. Aug. 16, 1878.]

K WAS accused by D and P, alleged to be D's wife, of raping P, and was committed for trial charged in the alternative with rape or adultery. The evidence of marriage between D and P consisted of their statements that they were married to each other, and of a statement by K that P was D's wife. K was convicted on the charge of adultery. *Held* that such evidence, having regard not only to s. 50 of the Evidence Act, 1872, but to the principle that strict proof should be required in all criminal cases, was not sufficient to establish the vital incident to the charge of adultery, namely, the marital relation of D and P. *Empress v. Pitambur Singh* (I. L. R., 5 Cal. 566) concurred in. Also that, as no complaint had ever been actually instituted by D against K for the offence of adultery, as contemplated by s. 478 of Act X. of 1872 (corresponding with s. 199 of Act X. of 1882), (the circumstance of D's appearing as a witness for the prosecution for the offence of rape not amounting to the institution of a complaint within the meaning of that section), K's conviction for adultery must be quashed.—*Empress v. Kallu*, I. L. R., 5 All. 233. [Straight, J. Dec. 8, 1882.]

A MAN may be convicted of house-trespass with intent to commit adultery, even though the charge is made by a person other than the husband, provided there is no consent or connivance on the part of the husband.—3 Mad. Jur. 285.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Warrant.  
Bailable.  
Comp.

**498.** Whoever takes or entices away any woman who is, and whom he knows or has reason to believe to be, the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals or detains with that intent any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

THE prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498 of the Penal Code, and for wrongful confinement of her under s. 343, *held* that both sentences could not stand, and that as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone.—*Queen v. Ishwar Chunder Jogi*, W. R. Sp. 21. [Loch and Seton-Karr, JJ. April 12, 1864.]

WHERE a procuress was convicted for inducing a married woman of 20 to leave her husband's house, and the facts showed that the wife had made her deliberate choice (she being of mature age), and was determined of her own free will to leave her husband and become a prostitute in Calcutta, the High Court altered the conviction from abduction to enticement, remarking that, whatever the wife's secret inclinations were, she would have had no opportunity of carrying them out had not the prisoner interposed.—*Queen v. Srimotee Poddee and others*, 1 W. R. 45. [Kemp and Glover, JJ. Dec. 16, 1864.] But, according to the case of *Empress v. Kallu* (1 L. R., 5 All. 233) and s. 199 of the Code of Criminal Procedure, neither the High Court nor any other Criminal Court has any jurisdiction to alter a charge of abduction to one of enticement. There must be a formal complaint of enticement by the party aggrieved.—*Ed.*

WHERE the man and the woman are perfectly agreed, the act of the third party, who merely accompanies the woman from her husband's house, amounts to abetment only.—*Rulings of Mad. H. C.*, 1864, on s. 498.

A PERSON convicted of adultery under s. 497 of the Penal Code need not be convicted also under s. 498; far less where there is no taking or enticing away of the woman.—*Queen v. Poochun Chung*, 2 W. R. 35. [Kemp and Glover, JJ. Feb. 14, 1865.]

THE following remarks were made by the High Court in upholding a conviction in a case in which an accused had eloped with a woman from a house in Calcutta, hired for her by her husband, who was absent in Assam: "We cannot say (as the Sessions Judge said) that 'a wife is always the property of her husband, whether he is absent or present;' but we think it clear that a wife living in her husband's house or in a house hired by him for her occupation, and at his expense, is, during his temporary absence, living under his protection, so as to bring the case within the meaning of s. 498, provided, of course, that the defendant knew, or had reason to believe, that she was the wife of the man from whose protection he took her, or on whose behalf the person from whom he took her had charge of her, and also provided he took her with the intent specified in the Act. To hold otherwise would be to declare the worst cases of seduction not punishable under the Penal Code.—*Mutty Khan v. Mangloo, Khansama*, 1 Wyman's Rev., Civ., and Crim. Rep. 45; 5 W. R. 50. [Jackson and Glover, JJ. Mar. 6, 1866.]

UPON an indictment under s. 498 of the Penal Code, charging that the prisoner took away one A, who was then, and whom he then knew to be, the wife of one M, with the intent that he might have illicit intercourse with the said A, *held* that there was a taking within the meaning of the section, although the advances and solicitations had proceeded from the woman, and the prisoner had for some time refused to yield to her request.—*Reg. v. Kumarasámi*, 2 Mad. H. C. R. 331. [Scotland, C.J., and Bittleston, J. Mar. 13, 1868.]

IN a charge under s. 498 of the Penal Code, the words of the section, "conceals or detains," must be taken to extend to the enticing or inducing a wife to withhold or conceal herself from her husband, and assisting her to do so, as well as to physical restraint or prevention of her will or action. Depriving the husband of proper control over his wife for the purpose of illicit intercourse, is the gist of the offence, and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishments.—*In re Sundara Dass Tevan*, 4 Mad. H. C. R. 20; 3 Mad. Jur. No. 5, 186. [Scotland, C.J., and Ellis, J. Mar. 13, 1868.]

IN a charge under s. 498 of the Penal Code (of taking away a married woman) marriage must be presumed from the fact of a man and woman living together and from their own evidence (altogether un rebutted) that she is his legally married wife.—*Queen v. Wuzeerah* and another, 17 W. R. 5; 8 B. L. R. Ap. 63. [*Loch and Ainslie, JJ.* Jan. 6, 1872.] Overruled by *Empress v. Pitambur Singh*, I. L. R., 5 Cal. 566; 5 C. L. R. 597.

WHERE the husband brought a specific complaint for adultery under s. 497, and the Magistrate framed a charge and convicted under s. 498, the Chief Court quashed the conviction.—*Sher Singh v. Crown*, Panj. Rec., No. 18 of 1878.

A FINDING exactly in the words of s. 498 of the Penal Code—that the prisoner took or enticed away a married woman from her husband or some person having the care of her on his behalf with intent that she may have illicit intercourse with any person, or concealed or detained such woman with a like intent—though not actually illegal when it is doubtful which of the several offences has been committed, is a finding which ought not to be resorted to if it can be avoided and it can be determined under which part of the section the prisoner is guilty.—*Queen v. Muthuranah Roy*, 22 W. R. 72. [*Markby and Mitter, JJ.* Aug. 24, 1874.]

THE accused were charged before a Magistrate of the First Class with enticing away a married woman (s. 498). The inquiry having shown that an offence under s. 494 had apparently been committed, the proceedings were forwarded under s. 45, Criminal Procedure Code (corresponding with s. 346, Act X. of 1882), for disposal to the Magistrate of the District, who tried the case *de novo*, and convicted the accused under ss. 109 and 494. Held that the preferring a complaint was an essential condition of the Magistrate's jurisdiction to inquire into and try an offence falling under Chap. XX. of the Penal Code, and the extent of the jurisdiction so founded was limited to offences covered by the facts complained of: that there had been no complaint of an offence under s. 494; and that the conviction was therefore illegal. Held also that the Magistrate before whom the complaint was made of an offence under s. 498 had jurisdiction to try it, and, therefore, that it was not competent for him to proceed under s. 45, Criminal Procedure Code (corresponding with s. 346, Act X. of 1882).—*Faiz Ahmed v. Empress*, Panj. Rec., No. 5 of 1879.

THE accused were convicted by the Magistrate of the District of Lahore, exercising enhanced powers under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, 388, Act X. of 1882), of kidnapping a married woman (being a minor) from lawful guardianship for the purpose of prostitution, and sentenced under ss. 363 and 372, Penal Code, to terms of imprisonment exceeding three years. The proceedings were forwarded to the Sessions Judge, Lahore Division, for confirmation of the sentences. The Sessions Judge, holding that ss. 363 and 372, Penal Code, were inapplicable to married female minors, annulled the conviction, and directed the re-trial of the accused on a charge under s. 498, Penal Code. Held that the order of the Sessions Judge was illegal: 1st, because ss. 363 and 372 were applicable to married as well as to unmarried female minors; 2nd, because the Sessions Judge was not competent under s. 36, Criminal Procedure Code (corresponding with ss. 30, 34, 380, Act X. of 1882), to direct a new trial upon a new charge; and, 3rd, because no complaint had been preferred of an offence falling under s. 498, Penal Code.—*Crown v. Kammu*, Panj. Rec., No. 12 of 1879.

AN order of acquittal of an offence under s. 498 was upheld where it was found that the complainant had divorced his wife previous to making his complaint.—*Hukam Din v. Allaohi*, Panj. Rec., No. 27 of 1879.

A PERSON was prosecuted before a Criminal Court in the Panjáb for enticing away a married woman with a criminal intent, an offence punishable under s. 498 of the Penal Code. Such prosecution was legally instituted in such Court, and such offence was properly triable by it. Such Court discharged such person under the provisions of s. 215 of Act X. of 1872. Subsequently it appeared that such person was detaining such woman at a place in the North-Western Provinces, and he was prosecuted before a Criminal Court of the district in which such place was situated for the same offence as he had been prosecuted for before the Criminal Court in the Panjáb, *viz.*, enticing away such married woman, and was convicted of that offence. Held that, although his previous discharge did not bar the revival of a prosecution for the same offence, such prosecution could only be revived in the Panjáb Court, and he could not be convicted under the latter part of s. 498 of the Penal Code for detaining an enticed woman until the enticing had been proved, and such conviction had been properly set aside by the Court of Session.—*Empress v. Tika Singh*, I. L. R., 3 All. 251. [*Pearson and Oldfield, JJ.* Sep. 1, 1880.]

IN the absence of very clear evidence of custom, which, if well founded, must be a matter of general notoriety, the cohabitation of a man and a woman under the Alyasantana system cannot be considered marriage so as to render punishable, under s. 498 of the Penal Code, a person who entices away the woman with the intents specified in that section.—*Koraga v. Queen*, I. L. R., 6 Mad. 374. [Turner, C.J., and Muttusami Ayyar, J. Feb. 14, 1883.]

S AND G having been convicted of enticing away the wife of the complainant, the conviction was quashed on appeal, on the ground that strict proof of marriage being necessary for a conviction under s. 498 of the Penal Code, the evidence adduced (*viz.*, of the complainant, the woman, and her mother, who swore to the fact of the marriage) was not sufficient to enable the Court to form an opinion whether the marriage took place as a fact, and if it did take place, whether it was according to law. The accused did not cross-examine the witnesses as to the fact or validity of the marriage, or otherwise impugn it. *Held* that the marriage was sufficiently proved. *Empress v. Pitambur Singh* (I. L. R., 5 Cal. 566; 5 C. L. R. 597) discussed.—*Queen-Empress v. Subbarayan*, I. L. R., 9 Mad. 9. [Muttusami Ayyar and Hutchins, JJ. Aug. 25, 1885.]

## CHAPTER XXI.

### OF DEFAMATION.

#### INDIAN LAW COMMISSIONERS' REPORT ON DEFAMATION.

THE essence of the offence of defamation consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow-creatures, and those inconveniences to which a person who is the object of such unfavourable sentiments is exposed.

According to the theory of the criminal law of England, the essence of the crime of private libel consists in its tendency to provoke breach of the peace; and, though this doctrine has not, in practice, been followed out to all the startling consequences to which it would legitimately lead, it has not failed to produce considerable inconvenience.

It appears to us evident that between the offence of defaming, and the offence of provoking a breach of the peace, there is a distinction as broad as that which separates theft and murder. Defamatory imputations of the worst kind may have no tendency to cause acts of violence. Words which convey no discreditable imputation whatever may have that tendency in the highest degree. Even in cases where defamation has a tendency to cause acts of violence, the heinousness of the defamation considered as defamation is by no means proportioned to its tendency to cause such acts: nay, circumstances which are great aggravations of the offence, considered as defamation, may be great mitigations of the same offence, considered as a provocation to a breach of the peace. A scurrilous satire against a friendless woman, published by a person who carefully conceals his name, would be defamation in one of its most odious forms. But it would be only by a legal fiction that the satirist

could be said to provoke a breach of the peace. On the other hand, an imputation on the courage of an officer, contained in a private letter, meant to be seen only by that officer and two or three other persons, might, considered as defamation, be a very venial offence. But such an imputation would have an obvious tendency to cause a serious breach of the peace.

On these grounds we have determined to propose that defamation shall be made an offence, without any reference to its tendency to cause acts of illegal violence.

We considered whether it would be advisable to make a distinction between the different modes in which defamatory imputations may be conveyed: and we came to the conclusion that it would not be advisable to make any such distinction.

By the English law, defamation is a crime only when it is committed by writing, printing, engraving, or some similar process. Spoken words reflecting on private character, however atrocious may be the imputations which those words convey, however numerous may be the assembly before which such words are uttered, furnish ground only for a civil action. Herein the English law is scarcely consistent with itself. For if defamation be punished on account of its tendency to cause a breach of the peace, spoken defamation ought to be punished even more severely than written defamation, as having that tendency in a higher degree. A person who reads in a pamphlet a calumnious reflection on himself, or on some one for whom he is interested, is less likely to take a violent revenge than a person who hears the same calumnious reflection uttered. Public

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men who have, by long habit, become callous to slander and abuse in a printed form, often shew acute sensibility to imputations thrown on them to their faces. Indeed, defamatory words spoken in the presence of the person who is the object of them, necessarily have more of the character of a personal affront, and are therefore more likely to cause a breach of the peace, than any printed libel.

The distinction which the English criminal law makes between written and spoken defamation is generally defended on the ground that written defamation is likely to be more widely spread and to be more permanent than spoken defamation. These considerations do not appear to us to be entitled to much weight. In the first place, it is by no means necessarily the fact that written defamation is more extensively circulated than spoken defamation. Written defamation may be contained in a letter intended for a single eye. Spoken defamation may be heard by an assembly of many thousands. It seems to us most unreasonable that it should be penal to say in a private letter that a man is dissipated, and not penal to stand up at the town-hall, and there, before the whole society of Calcutta, falsely to accuse him of poisoning his father.

In the second place, it is not necessarily the fact that the harm caused by defamation is proportioned to the extent to which the defamation is circulated. Some slanders—and those slanders of a most malignant kind—can produce harm only while confined to a very small circle, and would be at once refuted if they were published. A malignant whisper addressed to a single hearer, and meant to go no further, may indicate greater depravity, may cause more intense misery, and may deserve more severe punishment, than a satire which has run through twenty editions. A person, for example, who, in private conversation, should infuse into the mind of a husband suspicions of the fidelity of a virtuous wife, might be a defamer of a far worse description than one who should insert the lady's name in a printed lampoon.

It must be allowed that, in general, a printed story is likely to live longer than a story which is only circulated in conversation. But, on the other hand, it is far easier for a calumniated person to clear his character either by argument, or by legal proceedings, from a charge fixed in a printed form, than from a shifting rumour which nobody repeats exactly as he heard it. In general, we believe, a man would rather see in a newspaper a story discreditable to him which he had the means of refuting than know that such a story, though not published, was current in society.

On the whole, we are so far from being able to discover any reason for exempting any mode of defamation from all punishment, that we have not even thought it right to provide different degrees of punishment for different modes of defamation. We do not conceive that on this subject any general rule can, with propriety, be laid down. We have therefore thought it best to leave to the Courts the business of apportioning punishment with due regard to the circumstances of every case.

We have thought it necessary, under the peculiar circumstances of this country, to lay down for the guidance of the Courts a rule which, if we were legislating for a population among whom there was a uniform standard of morality and honour, might appear superfluous. India is inhabited by races which differ widely from each other in manners, tastes, and religious opinions. Practices which are regarded as innocent by one large portion of society excite the horror of another large portion. A Hindu would be driven to despair if he knew that he was believed by persons of his own race to have done something which a Christian or a Mussulman would consider as indifferent or as laudable. Where such diversities of opinion exist, that part of the law which is intended to prevent pain arising from opinion ought to be sufficiently flexible to suit those diversities. We have, therefore, directed the Judge not to decide the question whether an imputation be or be not defamatory, by reference to any particular standard, however correct, of honour, of morality, or of taste; but to extend an impartial protection to opinions which he regards as erroneous, and to feelings with which he has no sympathy.

There are nine excepted cases in which we propose to tolerate imputations prejudicial to character.

The exception which stands first in order will probably be thought by many persons objectionable. It is opposed to the rules of the English criminal law. It goes, we fear, beyond what even the boldest reformers of English law have proposed. It is at variance with the provisions of the French Code, and with the sentiments of the most distinguished French jurists. It is at variance also with the provisions of the Code of Louisiana. It is, therefore, with some diffidence that we venture to lay before the Governor-General in Council the results of a long and anxious consideration of this question.

The question is whether the truth of an imputation prejudicial to character should, in all cases, exempt the author of that imputation from punishment as a defamer. We conceive that it ought to exempt him.

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It will hardly be disputed, even by those who dissent from us on this point, that there is a marked distinction between true and false imputations, as respects both the degree of malignity which they indicate, and the degree of mischief which they produce. The accusing a man of what he has not done implies, in a vast majority of cases, greater depravity than the accusing him of what he has done. The pain which a false imputation gives to the person who is the object of it, is clear, uncompensated evil. There is no set-off whatever. The pain which a true imputation gives to the person who is the object of it is in itself an evil, and, therefore, ought not to be wantonly inflicted. But there is often some counterbalancing good. A true imputation may produce a wholesome effect on the person who has, by his misconduct, exposed himself to it. It may deter others from imitating his example. It may set them on their guard against his bad designs.

Not only do true imputations generally produce some good to counterbalance the evil caused by them, but in many cases this counterbalancing good appears to us greatly to preponderate. However skilfully penal laws may be framed, however vigorously they may be carried into execution, many bad practices will always be out of reach of the tribunals. The state of society would be deplorable, if public opinion did not repress much that legislators are compelled to tolerate. The wisest legislators have felt this, and have assigned it as a reason for not visiting certain acts with legal punishment that those acts will be sufficiently punished by general disapprobation. It seems inconsistent and unwise to rely on public opinion in certain cases as a valuable auxiliary to the law, and at the same time to treat the expression of that opinion in those very cases as a crime.

It is easy to put cases about which there could scarcely be any difference of opinion. A person who has been guilty of gross acts of swindling at the Cape comes to Calcutta, and proposes to set up a house of agency. A person who has been forced to fly from England on account of his infamous vices repairs to India, opens a school, and exerts himself to obtain pupils. A captain of a ship induces natives to emigrate by promising to convey them to a country where they will have large wages and little work. He takes them to a foreign colony where they are treated like slaves, and returns to India to hold out similar temptations to others. A man introduces a common prostitute, as his wife, into the society of all the most respectable ladies of the Presidency. A person in a high station is in the habit of encouraging ruinous play among

young servants of the Company. In all these cases, and in many others which might be named, we conceive that a writer who publishes the truth renders a great service to the public, and cannot, without a violation of every sound principle, be treated as a criminal.

There are undoubtedly many cases in which the spreading of true reports prejudicial to the character of an individual would hurt the feelings of that individual, without producing compensating advantage in any other quarter. The proclaiming to the world that a man keeps a mistress, that he is too much addicted to wine, that he is penurious in his house-keeping, that he is slovenly in his person, the raking up of ridiculous and degrading stories about the youthful indiscretions of a man who has long lived irreproachably as a husband and a father, and who has attained some post which requires gravity and even sanctity of character, can seldom or never produce any good to the public sufficient to compensate for the pain given to the person attacked, and to those who are connected with him. Yet we greatly doubt whether, where the imputations are true, it be advisable to inflict on the propagators of such miserable scandal any legal punishment in addition to that general aversion and contempt with which their calling and their persons are every where regarded. Even in such cases the question whether the imputation be true or false is not an unimportant question. Those who would not allow truth to be, in such cases, a justification, would admit that it ought generally to be a mitigating circumstance. Indeed, we find it impossible to imagine any case in which we should punish a man who told no more than the truth respecting another, as severely as if what he told had been a lie invented to blast the reputation of that other.

These two propositions, then, we consider as established—first, that in some cases of prosecution for defamation the truth of the imputation alleged to be defamatory ought to be a justification; secondly, that in the vast majority of such cases, if not in all, truth, if it be not a justification, ought to be a mitigation.

From these two propositions a third proposition necessarily follows—that in all cases of prosecution for defamation, if the defendant avers that the imputations complained of as defamatory are true, the Court ought to go into the question of the truth of those imputations.

This ought to be done, not only in justice to the public and to the defendant, but in justice to the innocent complainant. It

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must not be forgotten that one of the most important ends which a person proposes to himself in prosecuting a slanderer is the refuting of the slander. He generally considers the punishment of the offender as a secondary object; and, when there is no circumstance of peculiar aggravation in the case, is often willing to stay proceedings after obtaining a retraction and apology. To clear his fame is his first object. It is, we conceive, an object for the attaining of which he is entitled to the assistance of the law. But it is an object which cannot be attained unless the Courts go into the question of truth.

The effect of a rule excluding evidence of the truth is to put on a par descriptions of persons between whom it is desirable to make the widest distinction. The public-spirited man who warns the mercantile community against a notorious cheat, or advises families not to admit into their intimacy a practised seducer of innocence, is placed on the same footing with the slanderer who invents the most infamous falsehoods against persons of the purest character. On the other hand, a man who has, without the slightest reason, been held up to the world as a seducer or a swindler, is placed in exactly the same situation with one who well deserves those disgraceful names. So defective is the investigation that it leaves a suspicion lying on the most innocent, and no more than a suspicion lying on the most guilty.

We therefore think that in all cases of prosecution for defamation the Courts ought to allow the question of truth to be gone into. But if in all cases the Courts allow the question of truth to be gone into, we are satisfied that no respectable person will venture to institute a prosecution for defamation in a case in which he knows that the truth of the defamatory matter is likely to be proved. He will feel that by prosecuting he should injure his own character far more deeply than any libeller can do. However disagreeable it may be to his feeling that a discreditable story concerning him should be repeated in society, and should furnish paragraphs for the newspapers, it must be much more disagreeable that such a story should be proved, in open Court, by legal evidence. By prosecuting he turns what was at most a strong suspicion into an absolute certainty. While he forbears to prosecute, many people will probably disbelieve the scandalous report: many will doubt about its truth. The mere circumstance that he abstains from prosecuting is no proof of guilt. It is notorious that slanders are often passed by with silent contempt by those who are the objects of them. Indeed, in a country where the press is free,

a man whose station exposes him to remark would have nothing to do but to prosecute, if he should institute legal proceedings every time that he might be calumniated.

It seems to us therefore certain that a man on whose character imputations have been thrown which can be proved to be true will, if he possess ordinary prudence and ordinary sensibility, abstain from having recourse to a Court of law which will fully investigate the truth of those imputations. By having recourse to a Court of law he would show that he belonged to a class of persons who are the last that a legislator would wish to favour, to that class of persons in whom the sense of shame is weak, and the malicious passion strong, and who are content to incur dishonor for the chance of obtaining revenge.

Being therefore of opinion that, in all cases of prosecution for defamation, evidence of the truth of the imputations alleged to be defamatory ought to be received, and being of opinion that practically there is no difference between receiving evidence of truth and allowing truth to be a justification, we have thought it advisable to provide, expressly, that truth shall always be a justification. By framing the law thus we have not in the smallest degree diminished the real security of private character, or the real risk of detraction. We have merely made the language of the Code correspond with its virtual operation.

As we are satisfied that no practical mischief will be produced by the rule which we have proposed, we think that its perfect simplicity and certainty are strong reasons for adopting it.

If it be not adopted, it will be necessary to take one of two courses—either to provide that truth shall in no case be a justification, or to provide that truth shall be a justification in some cases, and not in others. To the former course we feel, for reasons which we have already assigned, insurmountable objections. The effect of such a state of the law would be that eminent public services would often be treated as crimes. If the latter course be taken, we are convinced that it would be found impossible to draw any line approaching to accuracy. We are convinced that it would be necessary to leave to the Judges an almost boundless discretion—a discretion which no two Judges would exercise in the same manner.

It has been suggested to us, from quarters entitled to great respect, that it would be a preferable course to admit in every case the truth of matter alleged to be defamatory to be given in evidence, for the purpose of proving that the accused person had not acted maliciously; but not to allow the proof of the



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truth to be a justification if it should appear that reputation had been maliciously assailed.

If a provision of this kind were adopted, it would, for the reasons which we have already given, be in practice nugatory. For no respectable person would prosecute the author of an imputation which could be proved to be true. And we take it for granted that the law of procedure will not be framed in so cruel and unreasonable a manner as to permit a prosecution for defamation to be instituted in opposition to the wishes of the person defamed. Such a power of prosecution would scarcely ever be used by a friend of the person defamed: it would never be used by a judicious friend: and it would be a most formidable weapon in the hands of a malignant enemy.

But if the provision which we are considering were not certain to be in practice nugatory, we should think it a highly objectionable provision. When an act is of such a description that it would be better that it should not be done, it is quite proper to look at the motives and intentions of the doer for the purpose of deciding whether he shall be punished or not. But when an act which is really useful to society—an act of a sort which it is desirable to encourage—has been done, it is absurd to inquire into the motives of the doer for the purpose of punishing him if it shall appear that his motives were bad.

If A kills Z, it is proper to inquire whether the killing was malicious: for killing is *prima facie* a bad act. But if A saves Z's life, no tribunal inquires whether A did so from good feeling or from malice to some person who was bound to pay Z an annuity. For it is better that human life should be saved from malice than not at all. If A sets on fire a quantity of cotton belonging to Z, it is proper to inquire whether A acted maliciously. For the destruction of valuable property by fire is *prima facie* a bad act. But if Z's cotton is burning, and A puts it out, no tribunal inquires whether A did so from good feeling, or from malice to some other dealer in cotton, who, if Z's stock had been destroyed, would have been a great gainer. For the saving of valuable property from destruction is an act which it is desirable to encourage; and it is better that such property should be saved from bad motives than that it should be suffered to perish. Since then no act ought to be made punishable on account of malicious intention, unless it be in itself an act of a kind which it is desirable to prevent, it follows that malice is not a test which can with propriety be used for the purpose of determining what true imputations on character ought to be

punished, and what true imputations on character ought not to be punished. For the throwing of true imputations on character is not *prima facie* a pernicious act. It may, indeed, be a very pernicious act. But we are not prepared to say that in the majority of instances it is so. We are sure that it is often a great public service; and we are sure that it may be very pernicious when it is not done from malice, and that it may be a great public service when it is done from malice. It is perfectly conceivable that a person might, from no malicious feeling, but from an honest though austere and injudicious zeal for what he might consider as the interests of religion and morality, drag before the public frailties which it would be far better to leave in obscurity. It is also perfectly conceivable that a person who has been concerned in some odious league of villainy, and has quarrelled with his accomplices, may, from vindictive feelings, publish the history of their proceedings, and may, by doing so, render a great service to society. Suppose that a knot of sharpers lives by seducing young men to the gaming table, and pillaging them to their last rupee. Suppose that one of these knaves, thinking himself ill-used in the division of the plunder, should revenge himself by printing an account of the transactions in which he has been concerned. He is prosecuted by the rest of the gang for defamation. He proves that every word in his account is true. But it is admitted that his only motives for publishing it were rancorous hatred and disappointed rapacity. It would surely be most unreasonable in the Court to say: "You have told the public a truth which it greatly concerned the public to know. You have the saving of many promising youths. You have been the means of ridding society of a dreadful pest. You have done, in short, what it was most desirable that you should do. But as you have done this, not from public spirit, but from dislike of your old associates, we pronounce you guilty of an offence, and condemn you to fine and imprisonment."

It is evident that society cannot spare any portion of the services which it receives. Far from scrutinizing the motives which lead people to render such services, and punishing such services when they proceed from bad motives, all societies are in the habit of offering motives addressed to the selfish passions of bad men for the purpose of inducing those men to do what is beneficial to the mass. We offer pardons and pecuniary rewards to the worst members of the community for the purpose of inducing them to betray their accomplices in guilt. That the quarrels of rogues are the security

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of honest men is an important truth which has passed into a proverb; and of that security we should, to a certain extent, deprive honest men if we were to make it an offence in one rogue to speak the truth about another rogue under the influence of passions excited in the course of a quarrel.

We have hitherto argued this point on the supposition that by malice is meant real malice, and not a fictitious, a constructive malice. We have the strongest objections to introducing into the Code such a kind of malice—a malice of which a person may be acquitted when it is clear that he has acted from the most deadly personal rancour, and found guilty when those who find him guilty are satisfied that he has acted only from the best feelings—a malice which may be only the technical name for benevolence.

On these grounds, we recommend to the Governor-General in Council that the first exception, as we have drawn it, be suffered to stand part of the Code.

The remaining exceptions will not require so long a defence. By cl. 471 we allow the public conduct of public functionaries to be discussed, provided that such discussion be conducted in good faith. That the advantages arising from such discussion far more than compensate for the pain which it occasionally gives, will hardly be disputed by any English statesman.

But there are public men who are not public functionaries. Persons who hold no office may yet, in this country, take a very active part in urging or opposing the adoption of measures in which the community is deeply interested. It appears clear to us that every person ought to be allowed to comment, in good faith, on the proceedings of these volunteer servants of the public, with the same freedom with which we allow him to comment on the proceedings of the official servants of the public. We have provided for this by cl. 472.

By cl. 473 we have allowed all persons freely to discuss in good faith the proceedings of Courts of law, and the characters of parties, agents, and witnesses, as connected with those proceedings. It is almost universally acknowledged that the Courts of law ought to be thrown open to the public. But the advantage of throwing them open to the public will be small indeed, if the few who are able to press their way into a Court are forbidden to report what has passed there to the vast numbers who were absent, or if those who are allowed to know what has passed are not allowed to comment on what has passed. The only reason that the whole community is not admitted to hear every trial that takes place is that it is physically im-

possible that they should find room; and by cl. 473 we do our best to counteract the effect of this physical impossibility.

Whether public writers ought to be allowed to publish comments on trials, while those trials are still pending, is a question which, in the present state of India, it is hardly worth while to discuss. We have not thought it necessary to insert any provision on that subject in the chapter of offences against public justice; and such a provision, even if it were necessary, would evidently not belong to the head of defamation, for the harm done by such comments, as respects public justice, is exactly the same when the comments are laudatory as when they are abusive.

By cl. 474 we allow every person to criticise, in good faith, published books, works of art which are publicly exhibited, and other similar performances.

By cl. 475 we allow a person under whose authority others have been placed either by their own consent, or by the law, to censure, in good faith, those who are so placed under his authority, as far as regards matter to which that authority relates.

By cl. 476 we allow a person to prefer an accusation against another, in good faith, to any person who has lawful authority to restrain or punish the accused.

By cl. 477 we have excepted from the definition of defamation private communications which a person makes, in good faith, for the protection of his own interests; and by cl. 478 we have excepted private communications which a person makes in good faith for the benefit of others.

It will be observed that in the eight last exceptions we do not require that an imputation should be true. We require only that it should be made in good faith. For to require in these cases that the imputation should be true, would be to render these exceptions mere nullities. Whether a public functionary is or is not fit for his situation;—whether a person who has bestirred himself to get up a petition in favour of a public measure ought to be considered as an enlightened and public-spirited citizen, or as a foolish meddler;—whether a person who has been tried for an offence was or was not guilty;—which of two witnesses who contradicted each other on a trial ought to be believed;—whether a portrait is like;—whether a song has been well sung;—whether a book is well written;—these are questions about which honest and discerning men may hold opinions diametrically opposite: and to require a man to prove to the satisfaction of a Court of law that the opinion which he has expressed on such a question is a right opinion, is to prohibit all discussion on such

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questions. The same may be said of those private communications which we propose to allow. It is plainly desirable that a merchant should disclose to his partners his unfavourable opinion of the honesty of a person with whom the firm has dealings. It is desirable that a father should caution his son against marrying a woman of bad character. But if the merchant is permitted to say to his partners, if the father is permitted to say to his son, only what can be legally proved before a Court, it is evident that the permission is worth nothing.

Whether an imputation be or be not made in good faith is a question for the Courts of law. The burden of the proof will lie sometimes on the person who has made the imputation, and sometimes on the person on whom the imputation has been thrown. No general rule can be laid down. Yet scarcely any case could arise respecting which a sensible and impartial judge would feel any doubt. If, for example, a public functionary were to prosecute for defamation a writer who had described him in general terms as incapable, the Court would probably require the prosecutor to give some proof of bad faith.

If the prosecutor had no such proof to offer, the defendant would be acquitted. If the prosecutor were to prove that the defendant had applied to him for money, had promised to write in his praise if the money were advanced, and had threatened to abuse him if the money were withheld, the Court would probably be of opinion that the defendant had not written in good faith, and would convict him.

On the other hand, if the imputation were an imputation of some particular fact, or an imputation which, though general in form, yet implied the truth of some particular fact, which, if true, might be proved, the Court would probably hold that the burden of proving good faith lay on the defendant. Thus, if a person were to publish that a Collector was in the habit of receiving bribes from the zemindars of his district, and were unable to specify a single case, or to give any authority for his assertion, the Courts would probably be of opinion that the imputation had not been made in good faith.

Again: if a critic described a writer as a plagiarist, the Courts would not consider this as defamation without very strong proof of bad faith. But if it were proved that the critic had, like Lauder, interpolated passages in old books in order to bear out the charge of plagiarism, the Court would doubtless be of opinion that he had not criticised in good faith, and would convict him of defamation.

It will be necessary to provide in the Code of Procedure rules for pleading in cases of defamation, which may give to an innocent man who has been calumniated the means of clearing his character. It will be proper to provide that a defendant who is accused of defamation, and who rests his defence on the truth of the imputation alleged to be defamatory, shall be held strictly to the proof of the substance of the imputation if the imputation be particular, and shall be compelled to descend to particulars in his plea, if the imputation be general. It will not be expected that we should here go into any details respecting the law of criminal pleading. It is sufficient here to say that the importance of framing that part of the law in such a manner as to give full protection to persons whose character has been unjustly aspersed has not escaped our attention.

We may here observe that an imputation which is not defamatory may, under certain circumstances, be punishable on other grounds. Such an imputation may be intended to excite disaffection. If so, though not punishable as defamation, it will be punishable as sedition. An attack made, in good faith, on the public administration of the Governor of a Presidency will in no case be a defamation. But if the author of it designed to inflame the people against the Government, he will be liable to punishment under cl. 113.

Again, an imputation which is not defamatory may be intended to excite a mob to violence against an individual. If so, the author of the imputation is punishable under cl. 94.

Again, an imputation which is not defamatory may be uttered in the hearing of the person who is the object of it for the purpose of wantonly and maliciously annoying that person. If so, it is punishable under cl. 485. There are many cases in which it is fit that unpleasant truth should be told respecting an individual. But there is no case in which it is desirable that such truth should be told in such a way that the telling of it is a gross personal outrage. A person who has detected, or thinks that he has detected, a dishonest misrepresentation in a book, has a right to expose it publicly. But he cannot be allowed to intrude into the presence of the author of the book, and to tell him to his face that he is a liar. A person who knows the mistress of a female school to be a woman of infamous character deserves well of society if he states what he knows. But he cannot be allowed to follow her through the streets, calling her by opprobrious names, though he may be able to prove that all those names

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were merited. A person who brings to notice the malversation of a public functionary deserves applause. But a person who hangs a public functionary in effigy at that functionary's door, with an opprobrious label, does what cannot be permitted, even though every word on the label, and every imputation

which the exhibition was meant to convey, may be perfectly true.

We do not apprehend that the clauses relating to the printers and publishers of defamatory matter require any explanation or defence.

**499.** Whoever, by words either spoken or intended to be read, or by signs, or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

*Explanation 1.*—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

*Explanation 2.*—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

*Explanation 3.*—An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

*Explanation 4.*—No imputation is said to harm a person's reputation, unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

*Illustrations.*

(a.) A says, "Z is an honest man; he never stole B's watch;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the exceptions.

(b.) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

(c.) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

*First Exception.*—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good, is a question of fact.

Imputation of truth which public good requires to be made or published.

*Second Exception.*—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct, and no farther.

*Third Exception.*—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question and respecting his character, so far as his character appears in that conduct, and no farther.

*Illustration.*

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

*Fourth Exception.*—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

*Explanation.*—A Justice of the Peace or other officer holding an inquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section.

*Fifth Exception.*—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent, in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther.

*Illustration.*

(a.) A says, "I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(b.) But if A says, "I do not believe what Z asserted at that trial, because I know him to be a man without veracity." A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

*Sixth Exception.*—It is not defamation to express in good faith any opinion respecting the merits of any performance, which its author has submitted to the judgment of the public, or respecting the character of the author, so far as his character appears in such performance, and no farther.

*Explanation.*—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

*Illustrations.*

(a.) A person who publishes a book submits that book to the judgment of the public.

(b.) A person who makes a speech in public submits that speech to the judgment of the public.

(c.) An actor or singer who appears on a public stage submits his acting or singing to the judgment of the public.

(d.) A says of a book published by Z, "Z's book is foolish, Z must be a weak man. Z's book is indecent, Z must be a man of impure mind." A is within this exception if he says this in good faith, inasmuch as the opinion which he expresses of Z respects Z's character only so far as it appears in Z's book, and no further.

(e.) But if A says, "I am not surprised that Z's book is foolish and indecent, for he is a weak man, and a libertine," A is not within this exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

*Seventh Exception.*—It is not defamation in a person having over another any authority, either conferred by law or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

*Illustration.*

A Judge censuring in good faith the conduct of a witness or of an officer of the Court ; a head of a department censuring in good faith those who are under his orders ; a parent censuring in good faith a child in the presence of other children ; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils ; a master censuring a servant in good faith for remissness in service ; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this exception.

*Eighth Exception.*—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

*Illustration.*

If A in good faith accuses Z before a Magistrate ; if A in good faith complains of the conduct of Z, a servant, to Z's master ; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this exception.

*Ninth Exception.*—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

*Illustrations.*

(a.) A, a shop-keeper, says to B, who manages his business, "Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within this exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(b.) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within this exception.

*Tenth Exception.*—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed, or of some person in whom that person is interested, or for the public good.

CASE of defamation in which the complainant admitted all the more serious charges on which he based his complaint. Conviction and sentence quashed, as the gist of the

offence (*viz.*, that the charge was not made in good faith) was entirely lost sight of. Compensation is not awardable in such cases.—*Assuruddee Khan v. Baloo Khan* and another, 1 W. R. 6. [Kemp and Glover, JJ. Aug. 17, 1864.]

A SIMPLE assertion (nowhere disproved) regarding the way in which a sarishtádár had issued parwáns in an arbitration-suit does not amount to defamation.—*Queen v. Hem Chunder Mookerjee*, 1 W. R. 24. [Kemp and Glover, JJ. Nov. 18, 1864.]

A WROTE to B, informing him that he (B) was no gentleman. A question arose as to the remedy which B had against A. A charge of defamation would not lie under this section, because under the fourth explanation no imputation is said to harm a person's reputation, unless that imputation, directly or indirectly, lowers the character or credit of that person; and it could not be held that the mere writing of a letter to a person lowers his character or credit *in the estimation of others*. B's only remedy then was under s. 501, and whether A, by informing B that he was no gentleman, intended or knew it to be likely that the provocation would cause him to break the public peace, was a question of fact, to be determined by the Magistrate who tried the case.—Book Circular VIII., Criminal Side, Feb. 3, 1865, Jud. Com., Oudh, Currie's Penal Code, p. 406.

A FALSE accusation not made in good faith renders the party making it liable to be charged with defamation. The fact that the complainant is a man of low caste will not debar him from prosecuting for defamation on his being falsely charged with theft.—*Queen v. Nobin Doss*, 2 W. R. 35. [Trevor and Loch, JJ. Feb. 17, 1865.]

THE Penal Code makes no distinction between written and spoken defamation.—*Queen v. Mohunt Pursoram Doss*, 2 W. R. 36. [Kemp and Glover, JJ. Feb. 22, 1865.]

A PERSON using defamatory expressions for the protection of his son's interests is not privileged unless the imputation is made in good faith *i.e.*, with due care and attention.—*Queen v. Pursoram Doss*, 3 W. R. 45. [Kemp and Glover, JJ. July 12, 1865.]

ACT XVIII. of 1862 refers only to the High Court in its Original Criminal Jurisdiction, and is not applicable to Mofussil Courts. S. 27 of that Act requires proof of the existence of the circumstances relied on as a defence, before good faith can be presumed in a case of defamation. The onus of proving good faith is on the person making the imputation. Before such person can claim the benefit of excep. 9, s. 499 of the Penal Code, he must show that he has exercised due care and caution.—*Sealy v. Ramnarain Bose*, 4 W. R. 22. [Glover, J. Nov. 8, 1865.]

IN a case of defamation, proof of despatch by post, to a certain district, of the paper containing a defamatory matter, is tantamount to proof of publication thereof in the district.—*Queen v. Kally Doss Mitter and others*, 5 W. R. 44. [Campbell and Glover, JJ. Mar. 3, 1866.]

THE accused, an inspector of police, was sent to inquire if it was true that one Brojonath was a leader of dacoits. He reported that it was false, and that the baniyas of the village were trying to get him punished from an ill-feeling. He added, "I learnt from private inquiries that there is scarcely a woman in the houses of the baniyas who has not passed a night or two with the defendant Brojonath." Commitment of the accused for trial for defamation under s. 499 supported under the circumstances of the case. Held that as the report was made by the police-officer in the execution of his duty, and contained imputations which did not appear to be made recklessly or unjustifiably, the report did not amount to defamation, but was covered by the 9th exception to s. 499 of the Penal Code.—In the matter of the Petition of Rajnarain Sen, 14 W. R. 22; 6 B. L. R. Ap. 42. [Phear and Mitter, JJ. July 23, 1870.]

THE act of filing in Court a petition, containing imputations concerning a person calculated to harm his reputation, with the intention that it should be read by other persons, amounts to making or publishing the imputations within the meaning of s. 499 of the Penal Code. The criminal law of this country with regard to defamation depends on the construction of s. 499 of the Penal Code, and not on what may be the English law on the same subject.—*Green (Dr. J. A.) v. Delanney (J. P.)*, 14 W. R. 27. [Phear and Jackson, JJ. Aug. 3, 1870.]

A PLEADER or mukhtar, relying upon the statements of his client, and in good faith introducing into a pleading a defamatory averment, will be protected from liability for defamation by the 9th exception to s. 500 of the Penal Code; but the case is otherwise if the pleading be prepared by a person who has no such employment, and does not act in good faith.—*Queen v. Chrestien*, 2 N. W. P. 473. [Turner, J. Dec. 16, 1870.]

WHERE a person, while a defendant in a criminal case, used certain defamatory expressions, without due care and attention, against the prosecutor, it was held that such person was liable to a charge of defamation.—5 Rev. Jud., and Pol. Jour. 42.

A LETTER written by a Brahman to the Brahman community of the neighbourhood, with a view to obtain their decision on a matter affecting his own religious interests and that of the Brahman community, if written in good faith, falls within excepts. 8 and 10 of s. 499 of the Penal Code.—Reg. v. Káshináth Bachaji Bagul, 8 Bom. H. C. R. 166. [Melvill and Kembal, JJ. Aug. 31, 1871.]

THE gumasta of a guru or priest was convicted of defamation for having published an order of his master excommunicating the complainant from his caste. The letter publishing the excommunication was a statement that complainant disobeyed some one, and treated him with disrespect. Held that the letter contained no expressions defamatory *per se*. If the person so treated was in a position entitling him to demand submission, and to make non-submission an offence, then that position would render the communication privileged, and, if not, then the mere statement that the complainant did not obey one whom he was not bound to obey was not a defamatory imputation.—Pro., Dec. 20, 1871, 6 Mad. H. C. R. Ap. 46.

IN framing a charge of defamation it is not necessary to negative the exceptions contained in s. 499 of the Penal Code. It is not an error in law for a Judge to require a person accused of defamation to prove the several distinct imputations contained in a libellous article published by him, with the same strictness with which he would be required to prove them if he were the defendant in a civil action. The High Court, as a Court of Revision, cannot interfere with the findings of the lower Appellate Court on questions as to the truth of the allegations contained in a libel or the *bona fides* of the accused, but upon such questions are bound by the findings of the lower Court.—Reg. v. Kihábhái Parbhudás, 9 Bom. H. C. R. 451. [Lloyd and Kembal, JJ. Dec. 5, 1872.]

To sustain a charge of defamation it is not necessary to prove that the complainant actually suffered, directly or indirectly, from the scandalous imputation alleged; it is sufficient to show that the accused intended or knew or had reason to believe that the imputation made by him would harm the reputation of the complainant.—Queen v. Thakur Doss, 6 N. W. P. 86. [Turner, J. Feb. 2, 1874.]

ACCUSED, a petition-writer, wrote for presentation to the Commissioner's Court a memorandum of appeal in which he alleged that the order appealed from was based on "conjectural grounds," and that a certain statement made in the order was "utterly false." The Commissioner directed the Deputy Commissioner to pass a proper order in the matter, whereupon the Deputy Commissioner treated the case as one under s. 500, and after inquiry convicted accused. Held that the conviction was illegal, no complaint having been made to the Deputy Commissioner within the meaning of s. 142 of the Criminal Procedure Code (corresponding with ss. 191, 198, Act X. of 1882).—Nabi Shah v. Crown, Panj. Rec., No. 15 of 1878.

THE accused person, an editor of a newspaper, published an article in which the following passage, admittedly referring to the complainant, occurred: "Has his (the complainant's) character been inquired into? Does no one remember that this very man was sent by the Subordinate Judge of Sholápur to be prosecuted? Are not the proceedings instituted by the Subordinate Judge to be found on the record?" The Magistrate found that it was literally true that the complainant had been sent to be prosecuted, but that it was also true that the prosecution had, to the accused's knowledge, been ordered to be withdrawn by the District Judge. Held that, although the statement contained only the truth, it was incomplete and misleading; and that, as the accused was well aware that the prosecution referred to had been withdrawn, and did not injuriously affect the complainant's character, he could not plead that the imputations made by him on the complainant's character was made in good faith, or for the public good.—Imperatrix v. Kákde (B.), I. L. R., 4 Bom. 298. [Melvill and Pinhey, JJ. Feb. 12, 1880.]

M, a medical man, and editor of a medical journal published monthly, said in such journal of an advertisement published by H, another medical man, in which H solicited the public to subscribe to a hospital of which he was the surgeon in charge, stating the number of successful operations which had been performed: "The advertiser is certainly entitled to be congratulated on this marvellous success; but it is hardly consistent with the feelings and usages of the medical profession to herald them forth in this fashion. We are not surprised to find that the line he has elected to adopt has not met with the approval of his brother-officer serving in the same province, and we have no hesitation in



pronouncing his proceedings in this matter unprofessional." *Held* that, inasmuch as such advertisement had the effect of making such hospital a "public question," and of submitting it to the "judgment of the public," and M had expressed himself in good faith, M was within the third and sixth exceptions, respectively, to s. 499 of the Penal Code. *Held* also that M came within the ninth exception to that section. The sending of a newspaper containing defamatory matter by post from Calcutta, where it is published, addressed (to a subscriber at Allahabad, is a publication of such defamatory matter at Allahabad. The publisher of a newspaper is responsible for defamatory matter published in such paper, whether he knows the contents of such paper or not.—*Empress v. McLeod*, I. L. R., 3 All. 342. [Stuart, C.J. Dec. 7, 1880.]

WHERE the Magistrate convicted accused, a police-officer, on a charge of defamation, on account of a statement made by him in a report to his superior officer, which statement he had elicited from a third party in the course of a police-inquiry, the Chief Court, on the revision side, set aside the conviction and sentence as unsustainable, holding that the accused was merely acting in the discharge of his duty, and that the report was clearly privileged.—*Empress v. Sher Singh*, Panj. Rec., No. 23 of 1880.

C was put out of caste by a panchayat of his caste-follows on the ground that there was an improper intimacy between him and a woman of his caste. Certain persons, members of such panchayat, circulated a letter to the members of their caste generally, in which, stating that C and such woman had been put out of caste, and the reason for the same, and requesting the members of the caste not to receive them into their houses or to eat with them, they made certain statements applying equally to C or such woman. Such statements were defamatory within the meaning of s. 499 of the Penal Code. *Held* that, if such persons were careless enough to use language which was applicable to C, they did so at their peril, and they could not escape the responsibility of having defamed C by saying that they intended such language to apply to such woman. *Held* also, on the question whether such persons had acted in good faith, that, looking to the character of such letter, the circumstances under which it was written, and to the fact that C had been put out of caste for the reason alleged, had such persons contented themselves with announcing the determination of the panchayat, and the grounds upon which such determination was based, they would have been protected; but, inasmuch as they did not so content themselves, but went further, and made false and uncalled for statements regarding C, they had rightly been held not to have acted in good faith.—*Empress v. Ramanand*, I. L. R., 3 All. 664. [Straight, J. Mar. 28, 1881.]

THE law of defamation which should be applied in suits in India for defamation is that laid down in the Indian Penal Code, and not the English law of libel and slander. *Held*, therefore, that defamatory statements are not privileged merely because they are used in a petition preferred in a judicial proceeding. It is not essential that, before a person can be held entitled to the privilege of having made a statement in good faith for the protection of his interests, he should establish that every word he has spoken or written is literally true. If, having regard to facts and circumstances within his knowledge, he might, as an ordinarily reasonable and prudent man, have drawn the conclusions which he has expressed in defamatory language for the protection of his own interests, he may fairly be held to have made out his good faith.—*Abdul Hakim v. Tej Chandar Mukarji*, I. L. R., 3 All. 815. [Straight and Tyrrell, JJ. May 20, 1881.]

N HAVING attended a Hindu widow-marriage (legalized by Act XV. of 1856), S, his guru or spiritual superior, published a notice declaring N to be an outcaste, and forbidding the disciples of S and the public of the town in which N lived to associate with N, until he submitted to the prescribed penance, and obtained a certificate of purification from S. S also sent by post a registered post-card of similar purport to N. In consequence of the interdict of S, N was prevented from performing vows in the temple, lost the society of his relatives, and was otherwise damaged. N charged S with criminal intimidation, intimidation by attempt to induce a belief that by an act of the offender the person intimidated will become an object of divine displeasure, and defamation. *Held* that the first two charges were unfounded, but that S, by communicating the sentence of excommunication by a registered post-card to N, was guilty of defamation.—*Queen v. Sankara*, I. L. R., 6 Mad. 381. [Turner, C.J., and Muttusami Ayyar, J. April 20, 1883.]

WHERE a person, called upon by a panchayat, convened by the complainant's relatives, to explain why he had made a defamatory remark concerning the complainant, made a statement by way of explanation, *held* that, such statement being privileged, a conviction for defamation for making such statement was illegal.—*In re Govindappa*, I. L. R., 7 Mad. 36. [Turner, C.J. May 7, 1883.]

**HELD**, on the evidence in this case, in which the question was whether a person accused of defamation was protected by the eighth exception to s. 499 of the Penal Code, that the accused had failed to establish that he acted in good faith. *Abul Hakim v. Tej Chandra Mukarji* (I. L. R., 3 All. 817) referred to. Where the accused in a case of defamation intends to bring evidence to prove the truth of the defamatory matter, his advocate should cross-examine the complainant upon every matter upon which evidence is intended to be brought. If he does not do so, it is a subject of serious consideration whether he should subsequently be allowed to tender proof of the material incident of which he has not cross-examined upon.—*Empress v. Dhum Singh*, I. L. R., 6 All. 220; [Straight, J. Feb. 15, 1884.]

**HELD** by the Full Bench (Duthoit, J., dissenting) that the action of a person who sent to a public officer by post, in a closed cover, a notice under s. 424 of the Civil Procedure Code, containing imputations on the character of the recipient, but which was not communicated by the accused to any third person, was not such a making or publishing of the matter complained of as to constitute an offence within the terms of s. 499 of the Penal Code.—*Queen-Empress v. Taki Husain*, I. L. R., 7 All. 205. [Petheram, C.J., and Oldfield, Brodhurst, Mahmood, and Duthoit, JJ. Dec. 6, 1884.]

In a prosecution for defamation under s. 500 of the Penal Code, the alleged libel accused the complainant, who was a judicial officer, of (i) having, upon a particular occasion, used abusive language to certain respectable native litigants appearing before him in Court, and (ii) having, upon other occasions not specified, treated other respectable natives (not named) "in a similar manner." This latter accusation was contained in a postscript. The complaint filed by the complainant in the Court of the committing Magistrate, and the charge-sheet in which the Magistrate committed the defendant for trial, covered the whole of the document complained of, except the postscript. At the trial of the case the defendant pleaded not guilty, and also relied on the first, eighth, and ninth exceptions to s. 499 of the Penal Code. The prosecution gave evidence to prove that, in making the charges contained in the alleged libel, the defendant was actuated by express malice towards the complainant. **Held**, with reference to the terms of s. 499 of the Penal Code, that evidence of particular instances of abusive language applied by the complainant upon former occasions to natives appearing in his Court was admissible, first, as relating to the question what was the reputation which the defendant was said to have injured, and, secondly, because it must be gathered from the document complained of as a whole whether it showed a malicious intention or not.—*Laidman v. Harsey*, I. L. R., 7 All. 906. [Petheram, C.J. July 21, 1885.]

WHERE a Judge was charged with using defamatory language to a witness during the trial of a suit, **held** that, under s. 197 of the Code of Criminal Procedure, the complaint could not be entertained by a Magistrate without sanction.—*In re Golan Muhammad Sharif-ud-daulah*, I. L. R., 9 Mad. 439. [Parker, J. Jan. 8, 1886.]

ON the prosecution of the editor of a newspaper for defamation under s. 500 of the Penal Code by publishing a libel in his paper, an attested copy of a declaration made by the editor under s. 5 of Act XXV. of 1867, to the effect that he was the printer and publisher of the newspaper, was produced in evidence by the complainant. The editor having been convicted by the Magistrate, the Sessions Court on appeal quashed the conviction on the ground that there was no evidence that the editor was the writer of the libel or permitted its publication. **Held** that, in the absence of proof to the contrary, the declaration was *prima facie* proof of publication by the editor. **Held** also that it would be a sufficient answer to the charge if the editor proved that the libel was published in his absence and without his knowledge, and that he had in good faith entrusted the temporary management of the newspaper during his absence to a competent person.—*Bamasami v. Lokandá*, I. L. R., 9 Mad. 387. [Collins, C.J., and Mutlusami Ayyár, JJ. April 12, 1886.]

AN advocate in India cannot be proceeded against civilly or criminally for words uttered in his office as advocate.—*Sullivan v. Norton*, I. L. R., 10 Mad. 28. [Collins, C.J., and Kernan, Mutlusami Ayyár, Brandt, and Parker, JJ. Sept. 24, 1886.]

**500.** Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Punishment for defamation.

Ct. of Ses., Presy. Mag., or Mag. of 1st class. Unconv. Warrant. Bailable. Comp.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of  
1st class.  
Unocg.  
Warrant.  
Bailable.  
Comp.

**501.** Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

**502.** Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Ditto.

## CHAPTER XXII.

### OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

**503.** Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

*Explanation.*—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.

#### *Illustration.*

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

WHERE the accused went to the complainant, the brother of an adult woman, and told him that he had come from the Sarkár, and would get him six months' imprisonment if he (the complainant) did not let his sister go, it was held that these words did not constitute either criminal intimidation within the meaning of s. 503 of the Penal Code (there having been no threat of an *injury* in the sense of the Code), or any other offence known to the law.—*Reg. v. Morába Bháskarji*, 8 Bom. H. C. R. 101. [Kemball and West, JJ. July 13, 1871.]

N HAVING attended a Hindu widow-marriage (legalized by Act XV. of 1856), S, his guru, or spiritual superior, published a notice declaring N to be an outcaste, and forbidding the disciples of S, and the public of the town in which N lived, to associate with N until he submitted to the prescribed penance and obtained a certificate of purification from S. S also sent by post a registered post-card of similar purport to N. In consequence of the interdict of S, N was prevented from performing vows in the temple, lost the society of his relatives, and was otherwise damnified. N charged S with criminal intimidation, intimidation by attempt to induce a belief that by an act of the offender the person intimidated will become an object of divine displeasure, and defamation. Held that the first two charges were unfounded, but that S, by communicating the sentence of excommunication by a registered post-card to N, was guilty of defamation.—*Queen v. Sankara*, I. L. R., 6 Mad. 381. [Turner, C.J., and Muttusámi Ayyár, J. April 20, 1883.]

WHERE the exercise of ecclesiastical jurisdiction is plainly *ultra vires*, or otherwise unsanctioned by the ordinances of a religious society, or where such ordinances controvert the general law, and, in either case, consequences result which the criminal law was intended to restrain, the Criminal Courts are not at liberty to decline jurisdiction. A Roman Catholic complained to a Magistrate that he had been threatened with an illegal sentence of excommunication, and had been excommunicated by the ecclesiastical authorities, with a view to prevent him from asserting his legal rights in defending a civil suit

concerning the property of a church. *Held* that, under the circumstances, the proper course was for the Magistrate to have postponed the trial till the complainant proved in a Civil Court the illegality of the action of the ecclesiastical authorities.—*In re DeCruz*, I. L. R., 8 Mad. 140. [Turner, C.J., and Brandt, J. Dec. 2, 1884.]

THE accused sent a fabricated petition to the Revenue Commissioner, S D, containing a threat that, if a certain forest-officer were not removed elsewhere, he would be killed. The accused was charged with the offence of criminal intimidation under s. 507 of the Penal Code (Act XLV. of 1860). The Sessions Judge found that the Commissioner had neither official nor personal interest in the forest-officer. He, therefore, acquitted the accused of the offence of criminal intimidation, but convicted him of an attempt to commit the offence punishable under s. 507, and sentenced him to four months' simple imprisonment. *Held*, reversing the conviction and sentence, that as the person to whom the petition was addressed was not interested in the person threatened, the act intended and done by the accused did not amount to the offence of criminal intimidation within the meaning of s. 503 of the Penal Code. *Per* West, J.—“The offence of criminal intimidation, as defined, seems to require both a person to be threatened and another in whom he is specially interested. Then there must be the intent to cause alarm to the former by a threat to him of injury to the latter. The intent itself might be complete, though it could not be effected. But the existence of the interest seems essential to the offence, as also an equally to the attempt at the offence, since otherwise the attempt would be to do something not constituting an offence.” *Per* Birdwood, J.—“No criminal liability can be incurred, under the Penal Code, by an attempt to do an act which, if done, would not be an offence against the Code. In the present case, therefore, if the accused was not guilty of committing criminal intimidation, because the act intended and done by him lacked an ingredient of that offence, he could not be guilty of an attempt at that offence.”—*Queen-Empress v. Mangesh Jiváji*, I. L. R., 11 Bom. 376. [West and Birdwood, JJ. Feb. 10, 1887.]

**504. Whoever intentionally insults, and thereby gives provocation to**

Intentional insult with intent to provoke a breach of the peace.

any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall

be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Any Mag. Uncog. Warrant. Bailable. Comp.

**505. Whoever circulates or publishes any statement, rumour, or report,**

Circulating false report with intent to cause mutiny or an offence against the State, &c.

which he knows to be false, with intent to cause any officer, soldier, or sailor in the army or navy of the Queen, to mutiny, or with intent to cause fear or alarm to the public, and thereby to induce

any person to commit an offence against the State or against the public tranquillity, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Prosy. Mag. or Mag. of 1st or 2nd class. Uncog. Warrant. Not bailable. Not comp.

**506. Whoever commits the offence of criminal intimidation shall be**

Punishment for criminal intimidation.

punished\* with imprisonment of either description for a term which may extend to two years, or with

fine, or with both ; and if

the threat be to cause death or grievous hurt, or to

If threat be to cause death or grievous hurt, &c.

cause the destruction of any property by fire, or to cause an offence punishable with death or trans-

portation, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished† with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

\* Presy. Mag., or Mag. of 1st or 2nd class. Uncog. Warrant. Bailable. Comp.

† Ct. of Ses., Presy. Mag., or Mag. of 1st class. Uncog. Warrant. Bailable.

Not comp.

A THREAT to commit suicide if another person refuse to do a particular act is not criminal intimidation, unless that other person be interested in the person making the threat.—*Nubi Buksh v. Mussammat Omra*, Panj. Rec., No. 109 of 1866.

AN accused who threatened three witnesses was convicted and sentenced to four months' imprisonment for the threat to each witness—in all to one year. It was held that, if a person at one time criminally intimidates three different persons, and each of those persons brings a separate charge against him, the accused may be convicted for an offence as against each person, and be punished separately for each offence. The facts and evidence in this case, however, were considered insufficient to support the sentence, which was reversed as extremely harsh and unjust.—Reference in the Case of Goolzar Khan, Petitioner, 9 W. R. 30. [Kemp and Jackson, J.J. Mar. 10, 1868.]

WHERE the accused went to the complainant, the brother of an adult woman, and told him that he had come from the Sarkár, and would get him six months' imprisonment if he (the complainant) did not let his sister go, *held* that these words did not constitute either criminal intimidation within the meaning of s. 503 of the Penal Code (there having been no threat of an *injury* in the sense of the Code), or any other offence known to the law.—Reg. v. Morába Bháskarji, 8 Bom. H. C. R. 101. [Kemball and West, J.J. July 13, 1871.]

AN intention to intimidate, insult, or annoy any person in possession of a house, does not mean to insult or annoy any person in constructive, but in actual possession of the premises.—Ishur Chunder Kurmoker v. Seetal Dass Mitter, 17 W. R. 47; 8 B. L. R. Ap. 62. [Couch, C.J., and Ainslie, J. April 6, 1872.]

**507.** Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

THE accused sent a fabricated petition to the Revenue Commissioner, S D, containing a threat that, if a certain forest-officer were not removed elsewhere, he would be killed. The accused was charged with the offence of criminal intimidation under s. 507 of the Penal Code (Act XLV. of 1860). The Sessions Judge found that the Commissioner had neither official nor personal interest in the forest-officer. He, therefore, acquitted the accused of the offence of criminal intimidation, but convicted him of an attempt to commit the offence punishable under s. 507, and sentenced him to four months' simple imprisonment. *Held*, reversing the conviction and sentence, that as the person to whom the petition was addressed was not interested in the person threatened, the act intended and done by the accused did not amount to the offence of criminal intimidation within the meaning of s. 503 of the Penal Code. *Per* West, J.—“The offence of criminal intimidation, as defined, seems to require both a person to be threatened and another in whom he is specially interested. Then there must be the intent to cause alarm to the former by a threat to him of injury to the latter. The intent itself might be complete, though it could not be effected. But the existence of the interest seems essential to the offence, as also an equality to the attempt at the offence, since otherwise the attempt would be to do something not constituting an offence.” *Per* Birdwood, J.—“No criminal liability can be incurred, under the Penal Code, by an attempt to do an act, which, if done, would not be an offence against the Code. In the present case, therefore, if the accused was not guilty of committing criminal intimidation, because the act intended and done by him lacked an ingredient of that offence, he could not be guilty of an attempt at that offence.”—Queen-Empress v. Mangesh Jiváji, I. L. R., 11 Bom. 376. [West and Birdwood, J.J. Feb. 10, 1887.]

**508.** Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which

Act caused by inducing a person to believe that he will be rendered an object of divine displeasure.

Ct. of Ses.,  
Presy. Mag.,  
or Mag. of 1st  
class,  
Uncog.  
Warrant.  
Bailable.  
Not comp.

Presy. Mag.  
or Mag. of 1st  
or 2nd class.  
Uncog.  
Warrant.  
Bailable.  
Not comp.

it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

*Illustrations.*

(a.) A sits dharna at Z's door with the intention of causing it to be believed that by so sitting he renders Z an object of divine displeasure. A has committed the offence defined in this section.

(b.) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of divine displeasure. A has committed the offence defined in this section.

N HAVING attended a Hindu widow-marriage (legalized by act XV. of 1856), S, his guru, or spiritual superior, published a notice declaring N to be an outcaste, and forbidding the disciples of S, and the public of the town in which N lived, to associate with N until he submitted to the prescribed penance, and obtained a certificate of purification from S. S also sent by post a registered post-card of similar purport to N. In consequence of the interdict of S, N was prevented from performing vows in the temple, lost the society of his relatives, and was otherwise damaged. N charged S with criminal intimidation, by attempt to induce a belief that by an act of the offender the person intimidated will become an object of divine displeasure, and defamation. *Held* that the first two charges were unfounded, but that S, by communicating the sentence of excommunication by a registered post-card to N, was guilty of defamation.—*Queen v. Sankara, I. L. R., 6 Mad. 381. [Turner, C.J., and Muttusami Ayyar, J. April 20, 1883.]*

WHERE the exercise of ecclesiastical jurisdiction is plainly *ultra vires*, or otherwise unsanctioned by the ordinances of a religious society, or where such ordinances controvert the general law, and, in either case, consequences result which the criminal law was intended to restrain, the Criminal Courts are not at liberty to decline jurisdiction. A Roman Catholic complained to a Magistrate that he had been threatened with an illegal sentence of excommunication, and has been excommunicated by the ecclesiastical authorities, with a view to prevent him from asserting his legal rights in defending a civil suit concerning the property of a church. *Held* that under the circumstances the proper course was for the Magistrate to have postponed the trial till the complainant proved in a Civil Court the illegality of the action of the ecclesiastical authorities.—*In re De'Cruz, I. L. R., 8 Mad. 140. [Turner, C.J., and Brandt, J. Dec. 2, 1884.]*

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Words or gesture intended to insult the modesty of a woman. Presy. Mag. or Mag. of 1st class. Uncog. Warrant. Bailable. Not comp.

510. Whoever, in a state of intoxication, appears in any public place, or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees, or with both.

Misconduct in public by a drunken person. Any Mag. Uncog. Warrant. Bailable. Not comp.

## CHAPTER XXIII.\*

## OF ATTEMPTS TO COMMIT OFFENCES.

Triable by Court by which the offence at tempted is triable.  
 Cog. if offence attempted is cog.  
 Warrant or summons shall issue according as the offence is one in respect of which a warrant or summons shall ordinarily issue.  
 Bailable if offence contemplated is bailable.  
 Compoundable if offence attempted is compoundable.

**511.** Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

*Illustrations.*

(a.) A makes an attempt to steal some jewels by breaking open a box, and finds, after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b.) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

THE term of imprisonment for attempting to fabricate false evidence for the purpose of being used in a stage of judicial proceeding cannot extend beyond one-half of seven years.—*Queen v. Soondur Putnaick and another*, 3 W. R. 59. [Kemp and Seton-Karr, JJ. Aug. 7, 1865.]

IN the case of a conviction of attempting to commit house-breaking by night with intent to commit theft, a sentence of whipping was annulled as being illegal.—*Reg. v. Yellá valad Parshis*, 3 Bom. H. C. R. 37. [Couch, C.J., and Newton, J. Nov. 21, 1866.]

ATTEMPT at murder must not be confounded with causing grievous hurt with dangerous weapons.—*Gholam Russool v. Crown*, Panj. Rec., No. 32 of 1866.

S. 511 of the Penal Code does not apply to a case of dacoity. Where a prisoner was found guilty of an attempt at dacoity under that section, and of causing grievous hurt in such attempt under s. 397, and a sentence of three years' rigorous imprisonment was passed on him, the finding was amended by striking out "ss. 397 and 511," and substituting "s. 395."—*Queen v. Koonce*, 7 W. R. 48. [Jackson and Glover, JJ. Mar. 25, 1867.]

IN order to constitute the offence of attempt to murder under s. 307, the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events. *Aliter* under s. 511 taken in connection with ss. 299 and 300. Therefore, where the prisoner presented an uncapped gun at F G (believing the gun to be capped) with the intention of murdering him, but was prevented from pulling the trigger, *held* that he could not be convicted of an attempt to murder upon a charge framed under s. 307, but that, under the same circumstances, he might be convicted upon a charge of simple attempt to murder framed under s. 511 in connection with

\* NOTE.—Sections 13, 14, and 15, Act XXVII., 1870 (to amend the Indian Penal Code), enact as follows:—

13. [Application of certain chapters of Penal Code.]—The following chapters of the same Code, namely, IV. (General Exceptions), V. (of Abetment), and XXIII. (of Attempts to commit Offences), shall apply to offences punishable under the said sections 121A, 294A, and 304A; and the said Chapters IV. and V. shall apply to offences punishable under the said sections 124A and 225A.

14. [Sanction to prosecution under sections 121A, 124A, or 294A.]—No charge of an offence punishable under any of the said sections 121A, 124A, and 294A, shall be entertained by any Court unless the prosecution be instituted by order of, or under authority from, the Local Government.

15. [Saving of special and local laws.]—Nothing contained in this Act shall be taken to affect any of the provisions of any special or local law.

ss. 299 and 300. Unnecessary allegations in a charge may be rejected as surplusage. Apparent inconsistency between the English law with reference to attempts as laid down in *Reg. v. Collins* (33 L. J., M. C., 177) and the provisions of the Indian Penal Code explained.—*Reg. v. Francis Cassidy*, 4 Bom. H. C. R. 17. [Couch, C.J., and Westropp, J. Dec. 23, 1867.]

*HELD* by Glover, J., that incendiarism having, on several occasions, occurred in a village, produced by a ball of rag with a piece of burning charcoal within it, and the prisoner one evening being discovered to have a ball of that description concealed in his dhoti, which contained burning charcoal, he is, under s. 511 of the Penal Code, guilty of an attempt to commit mischief by fire. The possession of the instrument to commit mischief by fire, and the going about of the person with it, are sufficient to raise a presumption that he intended to commit the act, and had already begun to move towards the execution. These facts are sufficient to constitute an attempt. *Held*, by Mitter J., that the possession of a fire-ball, and moving about with it, cannot support a conviction under ss. 436 and 511 of the Penal Code. These facts are not sufficiently indicative of an intention to destroy a building used for human dwelling. To constitute an offence under s. 511 of the Penal Code, it is not only necessary that the prisoner should have done an overt act towards the commission of the offence, but that the act itself should have been done in the attempt to commit it.—*Queen v. Doyal Bawri*, 3 B. L. R. A. Cr. 55. [Glover and Mitter, JJ. Sept. 1, 1869.] In subsequent rulings, the opinion of Mitter, J., was upheld.

A, INTENDING to procure a forged document purporting to be executed by one Chotak, applied to K to accompany A to Gorakhpur, where A said Chotak would be found, and there to draw out a bond for execution by Chotak. In pursuance of this invitation, K, believing that Chotak would execute the bond, accompanied A to Gorakhpur. A took with him his ploughman, named Chetoo, and directed Chetoo to purchase a stamp-paper for the bond, and to give his name and description to the stamp-vendor as Chotak. Chetoo complied with this direction, and the stamp-vendor wrote on the stamp-paper an endorsement to the effect that the purchaser was Chotak, with the description which would apply to that person, but, suspecting false personation, arrested Chetoo, and took him to the Magistrate. On the above facts, the Sessions Judge convicted A of attempt to forge a valuable security, and, under ss. 467 and 511, sentenced him to be rigorously imprisoned for five years. *Held* that to constitute the offence of attempt under s. 511, Penal Code, there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence. The provisions of s. 511, Penal Code, do not extend to make punishable as attempts acts done in the mere stage of preparation. Although such are doubtless done towards the commission of the offence, they are not done in the attempt to commit the offence within the meaning of the word "attempt" as used in the section.—*Queen v. Ramsarun Chowbey*, 4 N. W. P. 46. [Turnor, J. Mar. 13, 1872.]

FACTS showing that an accused person had dug a hole, intending to place salt therein, in order that the discovery of the salt so placed might be used in evidence against his enemy in a judicial proceeding, would justify a conviction for an attempt to fabricate false evidence.—*Queen v. Nunda*, 4 N. W. P. 133. [Turner and Spankie, JJ. Aug. 16, 1872.]

M INSTIGATED Z to personate C, and to purchase in C's name certain stamped paper in consequence of which the vendor of the stamped paper endorsed C's name on such paper as the purchaser of it. M acted with the intention that such endorsement might be used against C in a judicial proceeding. *Held* that the offence of fabricating false evidence had been actually committed, and M was properly convicted of abetting the commission of such offence. *Queen v. Ramsarun Chowbey* (4 N. W. P. 46) distinguished and observed on.—*Empress v. Mula*, 1 L. R., 2 All. 105. [Turner, J. Jan. 24, 1875.]

THE act of causing the publication of banns of marriage is an act done in the preparation to marry, but does not amount to an attempt to marry. Where, therefore, a man, having a wife living, caused the banns of marriage between himself and a woman to be published, he could not be punished for an attempt to marry again during the lifetime of his wife.—*Reg. v. Peterson*, 1 L. R., 1 All. 316. [Pearson, J. Dec. 6, 1876.]

AN indecent assault upon a woman does not amount to an attempt to commit rape, unless the Court is satisfied that there was a determination in the accused to gratify his passions at all events, and in spite of all resistance.—*Empress v. Shankar*, 1 L. R., 5 Bom. 403. [Melvill and Nánabhái Haridás, JJ. Mar. 2, 1881.]



A PERSON cannot be convicted of an attempt to commit an offence under s. 511 of the Penal Code, unless the offence would have been committed if the attempt charged had succeeded. A prisoner, who was charged with attempting to commit forgery of a valuable security, was found guilty by the jury of attempting to commit forgery. The jury explained their finding by saying that the prisoner had ordered certain receipt-forms to be printed similar to those used by the Bengal Coal Company, and that one of these forms had actually been printed and the proof corrected by him; that the prisoner had had an intention of making such addition to the printed form as would make it a false document; and that he did this dishonestly and with intent to commit fraud. The Sessions Judge sentenced the prisoner to rigorous imprisonment for one year under ss. 465 and 511 of the Penal Code for attempting to commit forgery. *Held* that the conviction was wrong, and must be set aside.—In the Matter of the Petition of Riasat Ali, *alias* Babu Miya, *alias* Bodiuzzuma: *Empress v. Riasat Ali, alias Babu Miya, alias Bodiuzzuma*, I. L. R., 7 Cal. 352; 8 C. L. R. 572. [Garth, C.J., and Prinsep, J. June 3, 1881.]

THE accused sent a fabricated petition to the Revenue Commissioner, S D, containing a threat that, if a certain forest-officer were not removed elsewhere, he would be killed. The accused was charged with the offence of criminal intimidation under s. 507 of the Penal Code (Act XLV. of 1860). The Sessions Judge found that the Commissioner had neither official nor personal interest in the forest-officer. He, therefore, acquitted the accused of the offence of criminal intimidation, but convicted him of an attempt to commit the offence punishable under s. 507, and sentenced him to four months' simple imprisonment. *Held*, reversing the conviction and sentence, that as the person to whom the petition was addressed was not interested in the person threatened, the act intended and done by the accused did not amount to the offence of criminal intimidation within the meaning of s. 503 of the Penal Code. *Per* West, J.—“The offence of criminal intimidation, as defined, seems to require both a person to be threatened and another in whom he is specially interested. Then there must be the intent to cause alarm to the former by a threat to him of injury to the latter. The intent itself might be complete, though it could not be effected. But the existence of the interest seems essential to the offence, as also an equally to the attempt at the offence, since otherwise the attempt would be to do something not constituting an offence.” *Per* Birdwood, J.—“No criminal liability can be incurred, under the Penal Code, by an attempt to do an act, which, if done, would not be an offence against the Code. In the present case, therefore, if the accused was not guilty of committing criminal intimidation, because the act intended and done by him lacked an ingredient of that offence, he could not be guilty of an attempt at that offence.”—*Queen-Empress v. Mangesh Jivaji*, I. L. R., 11 Bom. 376. [West and Birdwood, JJ. Feb. 10, 1887.]

A PERSON who has been convicted of the offence of theft (an offence punishable under ch. 27 of the Penal Code) does not, on being convicted of an *attempt* to commit the offence of theft, become liable to the enhanced punishment allowed by s. 75 of the Penal Code.—*Queen-Empress v. Sricharan Bauri*, I. L. R., 14 Cal. 357. [Potheram, C.J., and Cunningham, J. Mar. 19, 1887.]

# SCHEDULE TO THE CRIMINAL PROCEDURE CODE.

## OFFENCES AGAINST OTHER LAWS.

Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.		Whether bailable or not.	Whether compoundable or not.	By what Court triable.
		Warrant.	Summons			
If punishable with death, transportation, or imprisonment for seven years or upwards.	May arrest without warrant.	...	...	Not bailable	Not compoundable.	According to the provisions of section 29* of this Code (Act X. of 1892).
If punishable with imprisonment for three years and upwards, but less than seven.	Ditto	...	...	Ditto	Ditto	
	...	...	...	...	...	
If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	...	...	Bailable	...	
If punishable with fine only	Ditto	...	...	Ditto	Ditto	...
	...	...	...	...	...	...

\* 29. Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court. When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code. Provided that—  
 (a) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;  
 (b) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may exceed three years; and  
 (c) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.



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THE NEW  
CODE OF CRIMINAL PROCEDURE,

BEING

ACT X. OF 1882.

WITH

A MOST COPIOUS INDEX.

BY

D. E. CRANENBURGH,

PLEADER.



Calcutta:

PRINTED AND PUBLISHED BY D. E. CRANENBURGH,  
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# THE NEW CODE OF CRIMINAL PROCEDURE.

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#### SCHEDULES.

# THE NEW CODE OF CRIMINAL PROCEDURE, ACT NO. X. OF 1882.

RECEIVED THE G.-G.'s ASSENT ON THE 6TH MARCH 1882.

*An Act to consolidate and amend the law relating to Criminal Procedure.*

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows :—

## PART I.

### PRELIMINARY.

#### CHAPTER I.

1. THIS Act may be called "The Code of Criminal Procedure, 1882 :"

Short title. and shall come into force on the first day of January, 1883 ;

Commencement.

It extends to the whole of British India ; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in

Local extent.

force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law now in force, or shall apply to—

(a) the Commissioners of Police in the towns of Calcutta, Madras, and Bombay, or the police in the towns of Calcutta and Bombay ;

(b) any officer duly authorized to try petty offences in military bázars at cantonments and stations occupied by the troops of the Presidencies of Fort St. George and Bombay respectively ;

(c) heads of villages in the Presidency of Fort St. George ; or

(d) village police-officers in the Presidency of Bombay :

(e) and nothing in sections 174, 175, and 176, shall apply to the police in the town of Madras.

2. On and from the first day of January, 1883, the enactments mentioned

in the first schedule shall be repealed to the extent specified in the third column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed, and orders, rules, and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of January, 1883, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed, and made under the corresponding section of this Code.



Act. X.  
1882.  
Chap. I.  
Ss. 3, 4.

**3.** In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV. of 1861, or Act No. X. of 1872, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having') the powers (or the 'full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class," and "Magistrate of the third class;" the expression "Magistrate of a Division of a District" shall be deemed to mean "Sub-divisional Magistrate," the expression "Magistrate of the District" shall be deemed to mean "District Magistrate," and the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate."

**4.** In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

(a) "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence; but does not include the report of a police-officer:

(b) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by the police or by any person (other than a Magistrate or police-officer) who is authorized by a Magistrate in this behalf:

(c) "Inquiry" includes every inquiry conducted under this Code by a Magistrate or Court:

(d) "Judicial proceeding" means any proceeding in the course of which evidence is or may be legally taken:

(e) "Writing" and "written" include "printing," "lithography," "photography," "engraving," and every other mode in which words or figures can be expressed on paper or on any substance:

(f) "Sub-division" means a sub-division, made under this Code, of a District:

(g) "Province" means the territories for the time being under the administration of any Local Government:

(h) "Presidency-town" means the local limits, for the time being, of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras, or Bombay:

(i) "High Court" means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras, and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Punjab, and the "Recorder of Rangoon":

In other cases "High Court" means the highest Court of criminal appeal or revision for any local area ;

or, where no such Court is established under any law for the time being in force, such officer as the Governor-General in Council may appoint in this behalf :

Act X.  
1882.

Chap. I.  
S. 4.

"Chief Justice:" (j) "Chief Justice" includes also the senior Judge of a Chief Court :

(k) "Advocate-General" includes also a Government Advocate, or, where there is no Advocate-General or Government Advocate, such officer as the Local Government may,

from time to time, appoint in this behalf :

(l) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown :

"Clerk of the Crown:"

(m) "Public Prosecutor" means any person appointed under s. 492, and includes any person acting under the directions of a Public Prosecutor ; and any person conducting a

prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction :

(n) "Pleader," used with reference to any proceeding in any Court, means

"Pleader:" a pleader authorized under any law for the time being in force to practise in such Court, and includ-

es (1) an advocate, a vakil, and an attorney of a High Court so authorized, and (2) any mukhtâr or other person appointed with the permission of the Court to act in such proceeding :

(o) "Police station" means any post declared, generally or specially, by the Local Government to be a police-station for the purposes of this Code, and includes any local area

specified by the Local Government in this behalf ; and "officer in charge of

"Officer in charge of a police-station:" a police-station" includes, when the officer in charge of the police-station is absent "from the station-

house,"<sup>1</sup> or unable from illness to perform his duties, the police-officer "present at the station-house"<sup>2</sup> who is next in rank to such officer and is above the rank of constable, or, when the Local Government so directs, any other police-officer so present :

"Offence:" (p) "Offence" means any act or omission made punishable by any law for the time being in force :

(q) "Cognizable offence" means an offence for, and "cognizable case"

"Cognizable offence:" means a case in, which a police-officer, within or

"Cognizable case:" without the Presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant :

"Non-cognizable offence" means an offence for, and "non-cognizable

"Non-cognizable offence:" case" means a case in, which a police-officer, within

"Non-cognizable case:" or without the Presidency-towns, may not arrest without warrant :

(r) "Bailable offence" means an offence shewn as bailable in the second

"Bailable offence:" schedule, or which is made bailable by any other law

"Non-bailable offence:" for the time being in force ; and "non-bailable offence" means any other offence ;

<sup>1</sup> The words quoted have been substituted for the word "therefrom" as originally enacted.—See Act V. of 1887.

<sup>2</sup> The words quoted have been substituted for the words "present at the police-station" as originally enacted.—See Act V. of 1887.

Act. X.  
1882.

Ch. I. &  
II.  
Ss. 4-7.

(s) "Warrant-case" means a case relating to an offence punishable with death, transportation, or imprisonment for a term exceeding six months :

"Warrant-case :"  
(t) "Summons-case" means a case relating to an offence not so punishable :

(u) "European British subject" means—

(1) any subject of Her Majesty born, naturalized, or domiciled in the United Kingdom of Great Britain and Ireland, or "European British subject :"  
in any of the European, American, or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal ;

(2) any child or grand-child of any such person by legitimate descent ;

"Chapter :"

"Schedule :"

"Place :"

(v) "Chapter" means a chapter of this Code ;  
and "schedule" means a schedule hereto annexed :

(w) "Place" includes also a house, building, tent, and vessel.

Words referring to acts.

Words which refer to acts done extend also to illegal omissions ; and

all words and expressions used herein and defined in the Indian Penal

Words to have same meaning as in Penal Code.

Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

5. All offences under the Indian Penal Code shall be inquired into and

Trial of offences under Penal Code.

tried according to the provisions hereinafter contained ; and all offences under any other law shall

Trial of offences against other laws.

be inquired into and tried according to the same provisions, but subject to any enactment for the

time being in force regulating the number or place of inquiring into or trying such offences.

## PART II.

### CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

#### CHAPTER II.

##### OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

###### A.—Classes of Criminal Courts.

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely :—

Classes of Criminal Courts.

I.—Courts of Session :

II.—Courts of Presidency Magistrates :

III.—Courts of Magistrates of the first class :

IV.—Courts of Magistrates of the second class :

V.—Courts of Magistrates of the third class :

###### B.—Territorial Divisions.

Sessions Divisions :

7. Every Province (including the Presidency-towns) shall be a Sessions Division, or shall consist of Sessions Divisions ;

Districts.

and every Sessions Division shall, for the purposes of this Code, be a District, or consist of Districts.

Act. X.  
1882.

Chap. II.  
Ss. 7-13.

The Local Government may alter the limits or, with the previous sanction of the Governor-General in Council, the number, of such Divisions and Districts.

Power to alter Divisions and Districts.

The Sessions Divisions and Districts existing when this Code comes into force shall be Sessions Divisions and Districts respectively, unless and until they are so altered.

Existing Divisions and Districts maintained altered.

Presidency-towns to be deemed Districts.

Every Presidency-town shall, for the purposes of this Code, be deemed to be a District.

8. The Local Government may divide any District outside the Presidency-towns into Sub-divisions, or make any portion of any such District a Sub-division, and may alter the limits of any Sub-division.

Power to divide Districts into Sub-divisions.

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

Existing Sub-divisions maintained.

### C.—Courts and Offices outside the Presidency-towns.

9. The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court.

Court of Session.

It may also appoint Additional Sessions Judges, Joint Sessions Judges, and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Officers temporarily succeeding to vacancies in office of District Magistrate.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second, or third class in any Subordinate Magistrates.

District outside the Presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Local limits of their jurisdiction.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

13. The Local Government may place any Magistrate of the first or second class in charge of a Sub-division, and relieve him of the charge as occasion requires.

Power to put Magistrate in charge of Sub-division.

Such Magistrate shall be called Sub-divisional Magistrates.

Act X.  
1882. Delegation of powers to  
District Magistrate.

The Local Government may delegate its powers under this section to the District Magistrate.

Chap. II.  
Ss. 14-17. 14. The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second, or third class, in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns.

Special Magistrates.

Such Magistrates shall be called Special Magistrates.

With the previous sanction of the Governor-General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime, and detecting, apprehending, and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

15. The Local Government may direct any two or more Magistrates in any place outside the Presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second, or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

Benches of Magistrates.

Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceeding as a member of the Bench belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Powers exercisable by Bench in absence of special direction.

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any District respecting the following subjects :—

- (a) the classes of cases to be tried ;
- (b) the times and places of sitting ;
- (c) the constitution of the Bench for conducting trials ;
- (d) the mode of settling differences of opinion which may arise between the Magistrate in session.

17. All Magistrates appointed under sections 12, 13, and 14, and all Benches constituted under s. 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Magistrates and Benches ; and every Magistrate (other than a Sub-divisional Magistrate and every Bench exercising powers in a Sub-division) shall be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

Subordination of Magistrates and Benches to District Magistrate :

to Sub-divisional Magistrate.

All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

Act X.  
1882.

Chap. II.  
Ss. 18-22.

Neither the District Magistrate, nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14, and 15, shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

*D.—Courts of Presidency Magistrates.*

18. The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions :

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

21. Every Chief Magistrate shall exercise, within the local limits of his jurisdiction, all the powers conferred on him by this Code, or which, by any law or rule in force immediately before this Code comes into force, are required to be exercised by any Senior or Chief Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

- (a) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town ;
- (b) the times and places at which Benches of Magistrates shall sit ;
- (c) the construction of such Benches ; and
- (d) the mode of settling differences of opinion which may arise between Magistrates in session.

*E.—Justices of the Peace.*

22. The Governor-General in Council, so far as regards the whole or any part of British India outside the Presidency-towns,

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Act X.  
1882. Justices of the Peace for  
the Presidency-towns.

23. The Governor-General in Council or the  
Local Government, so far as regards the town of  
Calcutta,

Ch. II. &  
III. and the Local Government, so far as regards the towns of Madras and  
Ss. 23-28. Bombay,

may, by notification in the official Gazette, appoint to be Justices of the  
Peace within the limits of the town mentioned in such notification, any per-  
sons resident within British India and not being the subjects of any foreign  
State whom such Governor-General in Council or Local Government (as the  
case may be) thinks fit.

24. Every person now acting as a Justice of the Peace within and for  
Present Justices of the any part of British India other than the said towns,  
Peace. under any commission issued by a High Court,  
shall be deemed to have been appointed under section 22 by the Governor-  
General in Council to act as a Justice of the Peace for the whole of British  
India other than the said towns.

Every person now acting as a Justice of the Peace within the limits of  
any of the said towns under any such commission shall be deemed to have  
been appointed under section 23 by the Local Government.

25. In virtue of their respective offices, the Governor-General, the Or-  
*Ex-officio* Justices of the dinary Members of the Council of the Governor-  
Peace. General, the Judges of the High Courts, and the  
Recorder of Rangoon, are Justices of the Peace within and for the whole of  
British India; "Sessions Judges and District Magistrates are Justices of the  
Peace within and for the whole of the territories administered by the Local  
Government under which they are serving;"\* and the Presidency Magistrates  
are Justices of the Peace within and for the towns of which they are respec-  
tively Magistrates.

#### *F.—Suspension and Removal.*

26. All Judges of Criminal Courts other than the High Courts estab-  
Suspension and removal of lished by Royal Charter, and all Magistrates, may  
Judges and Magistrates. be suspended or removed from office by the Local  
Government:

Provided that such Judges and Magistrates as now are liable to be sus-  
pended or removed from office by the Governor-General in Council only, shall  
not be suspended or removed from office by any other authority.

27. The Governor-General in Council may suspend or remove from office  
Suspension and removal of any Justice of the Peace appointed by him, and  
Justices of the Peace. the Local Government may suspend or remove from  
office any Justice of the Peace appointed by it.

### CHAPTER III.

#### POWERS OF COURTS.

##### *A.—Description of Offences cognizable by each Court.*

28. Subject to the other provisions of this Code, any offence under the  
Offences under Penal Code. Indian Penal Code may be tried by the High Court  
or Court of Session, or by any other Court by which  
such offence is shown in the eighth column of the second schedule to be  
triable.

\* The words quoted are inserted by Act III. of 1884, s. 1.

Offences under other laws.

29. Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court. Act X. 1882.

When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code : Provided that— Chap. III. Ss. 29-32.

(a) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years ;

(b) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years ; and

(c) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

30. In the territories respectively administered by the Lieutenant-Governor of the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg, and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate with power to try as a Magistrate all offences not punishable with death.

*B.—Sentences which may be passed by Courts of various Classes.*

Sentences which High Courts and Sessions Judges may pass.

31. A High Court may pass any sentence authorized by law.

A Sessions Judge, Additional Sessions Judge, or Joint Sessions Judge, may pass any sentence authorized by law ; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years ; but "any sentence of imprisonment for a term exceeding four years, and any sentence of transportation,"\* passed by an Assistant Sessions Judge, shall be subject to confirmation by the Sessions Judge.

Sentences which Magistrates may pass.

32. The Courts of Magistrates may pass the following sentences, namely :—

- |  |   |   |
|--|---|---|
| (a) Courts of Presidency Magistrates and of Magistrates of the first class : | { | Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law ;  |
|  |   | Fine not exceeding one thousand rupees ;  |
|  |   | Whipping.   |
| (b) Courts of Magistrates of the second class :                              | { | Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law ; |
|  |   | Fine not exceeding two hundred rupees ;   |
|  |   | Whipping.   |
| (c) Courts of Magistrates of the third class.                                | { | Imprisonment for a term not exceeding one month ;   |
|  |   | Fine not exceeding fifty rupees.  |

\* The words quoted have been substituted by Act X. of 1886, s. 1, for the words "any sentence of imprisonment for a term exceeding three years."



Act X.  
1882.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

Chap. III.  
Ss. 33-35.

No Court of any Magistrate of the second class shall pass a sentence of whipping unless he is specially empowered in this behalf by the Local Government.

**33.** The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default: Provided that the term is not in excess of the Magistrate's powers under this Code:

Power of Magistrates to sentence to imprisonment in default of fine.

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

**34.** The Court of a District Magistrate, specially empowered under section 20, may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years, or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding four years, and any sentence of transportation, shall be subject to confirmation by the Sessions Judge.\*

Higher powers of certain District Magistrates.

**35.** When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefore which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

Sentence in cases of conviction of several offences at one trial.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Maximum term of punishment.

Provided as follows:—

(a) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

(b) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

\* This section has been substituted by Act X. of 1866, s. 2, for the one originally enacted.

*C.—Ordinary and Additional Powers.*

Act X.  
1882.

**36.** All District Magistrates, Sub-divisional Magistrates, and Magistrates of the first, second, and third classes, have the powers hereinafter respectively conferred upon them, and specified in the third schedule. Such powers are called their "ordinary powers."

Chap. IV.  
Ss. 36-42.

**37.** In addition to his ordinary powers, any Sub-divisional Magistrate, or any Magistrate of the first, second, or third class, may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

**38.** The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

*D.—Conferment, Continuance, and Cancellation of Powers.*

**39.** In conferring powers under this Code, the Local Government may, by order, empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

Every such order shall take effect from the date on which it is communicated to the person so empowered.

**40.** Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area under the said Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

**41.** The Local Government may withdraw any powers conferred under this Code on any person by it or by any officer subordinate to it.

**PART III.**

**GENERAL PROVISIONS.**

**CHAPTER IV.**

**OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE, AND PERSONS MAKING ARRESTS.**

**42.** Every person is bound to assist a Magistrate or police-officer reasonably demanding his aid, whether within or without the Presidency-towns, Public when to assist Magistrates and police.

(a) in the taking of any other person whom such Magistrate or police-officer is authorized to arrest;

(b) in the prevention of a breach of the peace, or of any injury attempted to be committed to any railway, canal, telegraph, or public property; or

(c) in the suppression of a riot or an affray.

Act. X.  
1862.

Chap. V.  
Ss. 43-47.

**43.** When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

**44.** Every person, whether within or without the Presidency-towns, Public to give information of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459, and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention.

**45.** Every village-headman, village-watchman, village-police-officer, owner-Village-headmen, land-holders, and others bound to report certain matters. or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may obtain respecting—

(a) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, watchman, or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent ;

(b) the resort to any place within, or the passage through, such village, of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict, or proclaimed offender ;

(c) the commission of, or intention to commit, any non-bailable offence in or near such village ;

(d) the occurrence therein of any sudden or unnatural death, or of any death under suspicious circumstances.

EXPLANATION.—In this section “village” includes village-lands.

## CHAPTER V.

### OF ARREST, ESCAPE, AND RETAKING.

#### A.—Arrest generally.

**46.** In making an arrest, the police-officer or other person making the Arrest how made. same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

If such person forcibly resists the endeavour to arrest him, or attempts Resisting endeavour to arrest. to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.

**47.** If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, Search of place entered by person sought to be arrested.

or is within, any place, the person residing in, or being in charge of, such place, shall, on demand of such person acting as aforesaid, or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Act X.  
1882.

Chap. V.  
Ss. 48-53.

48. If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may be issued, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer, to enter such place and search therein, and

in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested), who, according to custom, does not appear in public, such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

49. Any police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself, or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

51. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest, or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

Act. X.  
1882.

*B.—Arrest without Warrant.*

Chap. V.  
Ss. 54-57.

When police may arrest without warrant.

**54.** Any police-officer may, without an order from a Magistrate, and without a warrant, arrest—  
*first*—any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned ;

*secondly*—any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking ;

*thirdly*—any person who has been proclaimed as an offender either under this Code or by order of the Local Government ;

*fourthly*—any person in whose possession anything is found which may reasonably be suspected to be stolen property, and who may reasonably be suspected of having committed an offence with reference to such thing ;

*fifthly*—any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ; and

*sixthly*—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy.

This section applies to the police in the towns of Calcutta and Bombay.

Arrest of vagabonds, habitual robbers, &c.

**55.** Any officer in charge of a police-station may, in like manner, arrest or cause to be arrested—

(a) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence ; or

(b) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself ; or

(c) any person who is by repute an habitual robber, house-breaker, or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

This section applies to the police in the towns of Calcutta and Bombay.<sup>1</sup>

**56.** When any officer in charge of a police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested, and the offence for which the arrest is to be made.

This section applies to the police in the towns of Calcutta and Bombay.<sup>1</sup>

**57.** When any person in the presence of a police-officer commits or is accused of committing a non-cognizable offence, and refuses, on demand of a police-officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name and residence may be ascertained ; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless before

<sup>1</sup> This clause has been added by Act X. of 1886, s. 3.

the expiration of that time, his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

Act X.  
1882.

Chap. V.  
Ss. 58-65.

**58.** A police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this chapter, pursue such person into any place in British India.

Pursuit of offenders into other jurisdictions.

**59.** Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender ;

Arrest by private persons.

and shall, without unnecessary delay, make over any person so arrested to a police officer ; or, in the absence of a police-officer, take such person to the nearest police-station.

Procedure on such arrest.

If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no reason to believe that he has committed any offence, he shall be at once discharged.

**60.** A police-officer making an arrest without warrant shall, without unnecessary delay, and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

Person arrested to be taken before Magistrate or officer in charge of police-station.

**61.** No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Person arrested/not to be detained more than 24 hours.

**62.** Officers in charge of police-stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Police to report apprehensions.

**63.** No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

Discharge of person apprehended.

**64.** When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Offence committed in Magistrate's presence.

**65.** Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Arrest by or in presence of Magistrate.

Act X.  
1882.

Chap. VI.  
Ss. 66-78.

- 66.** If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.  
 Power, on escape, to pursue and retake.
- 67.** The provisions of sections 47, 48, and 49, shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant, and is not a police-officer having authority to arrest.  
 Provisions of sections 47, 48, and 49 to apply to arrests under section 66.

## CHAPTER VI.

### OF PROCESSES TO COMPEL APPEARANCE.

#### A.—Summons.

- 68.** Every summons issued by a Court under this Code shall be in writing in duplicate signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule, direct.  
 Form of summons.
- Such summons shall be served by a police-officer, or, subject to such rules consistent with this Code as the Local Government may prescribe in this behalf, by an officer of the Court issuing it.  
 Summons by whom served.

This section applies to the police in the towns of Calcutta and Bombay.

- 69.** The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.  
 Summons how served.
- Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.  
 Signature of receipt for summons.

- 70.** Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a Presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.  
 Service when person summoned cannot be found.

- 71.** If the signature mentioned in sections 69 and 70 cannot, by the exercise of due diligence, be obtained, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.  
 Procedure when receipt cannot be obtained.

- 72.** Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court with the endorsement required by that section.  
 Service on servant of Government or of Railway Company.

- 73.** When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons, in  
 Service of summons outside local limits.

duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Act X.  
1882.

Chap. VI.  
Ss. 74-78.

74. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered, or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct, unless and until the contrary is proved.

The affidavit mentioned in this section may be attached to the duplicate of the summons, and returned to the Court.

*B.—Warrant of Arrest*

75. Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

76. Any Court issuing a warrant for the arrest of any person may, in its discretion, direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at the specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

The endorsement shall state (a) the number of sureties, (b) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (c) the time at which he is to attend before the Court.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

77. A warrant of arrest shall ordinarily be directed to one or more police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary, and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.

78. A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer, or manager of land within his district or sub-division for the arrest of any escaped convict, proclaimed offender, or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder, farmer, or manager, shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.



Act X.  
1882.

Chap. VI.  
Ss. 79-85.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

**79.** A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

**80.** The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

**81.** The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security), without unnecessary delay, bring the person arrested before which he is required by law to produce such person.

Where warrant may be executed.

**82.** A warrant of arrest may be executed at any place in British India.

**83.** When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed within the local limits of his jurisdiction.

**84.** When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Such Magistrate or police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

This section applies to the police in the towns of Calcutta and Bombay.

**85.** When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner.

Procedure on arrest of person against whom warrant issued.

86. Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: Provided that if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under section 76 on the warrant, and such person is ready and willing to give the security required by such direction, the Magistrate or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

Act X.  
1882.  
Chap. VI.  
Ss. 86-88.

Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

*C.—Proclamation and Attachment.*

87. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

The proclamation shall be published as follows:—

(a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court issuing the proclamation, to the effect that the proclamation was duly published on a specified day, shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

88. The Court may, after issuing a proclamation under section 87; order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person.

Such order shall authorize the attachment of any property belonging to such person within the District in which it is made; and it shall authorize the attachment of any property belonging to such person without such District, when endorsed by the District Magistrate "or Chief Presidency Magistrate" within whose District such property is situate.

If the property ordered to be attached be debts or other moveable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or to any two of such methods, as the Court thinks fit.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government,

<sup>1</sup> The words quoted have been inserted by Act X. of 1886, s. 4.

Act X. 1882. be made through the Collector of the District in which the land is situate ; and in all other cases—

- Chap. VI. Ss. 89-92.
- (e) by taking possession ; or
  - (f) by the appointment of a receiver ; or
  - (g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf ; or
  - (h) by all or any two of such methods, as the Court thinks fit.

The powers, duties, and liabilities of a receiver appointed under this section, shall be the same as those of a receiver appointed under Chapter XXXVI. of the Code of Civil Procedure.

If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government ; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government under the last paragraph of section 88 appears voluntarily, or is apprehended and brought before the Court by whose order the property was attached, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or, if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

#### *D.—Other Rules regarding Processes.*

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant for his arrest—

(a) if, either before the issue of such summons, or after the issue of the same, but before the time fixed for his appearance, the Court sees reason to believe that he has absconded, or will not obey the summons ; or

(b) if at such time he fails to appear, and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith, and no reasonable excuse is offered for such failure.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.

92. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

**93.** The provisions contained in this chapter, relating to a summons and warrant, and their issue, service, and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

Provisions in this chapter generally applicable to summonses and warrants of arrest

Act X. 1892.  
Ch. VII.  
Ss. 93-96.

## CHAPTER VII.

### OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

#### *A.—Summons to produce.*

**94.** Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station, considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation, inquiry, trial, or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

Summons to produce document or other thing.

Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, post-card, telegram, or other document in the custody of the Postal or Telegraph Authorities.

**95.** If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court, or Court of Session, wanted for the purpose of any investigation, inquiry, trial, or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph Authorities, as the case may be, to deliver such document to such person as such Magistrate or Court directs.

Procedure as to letters and telegrams.

If any such document is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for, and to detain, such document, pending the orders of any such District Magistrate, Chief Presidency Magistrate, or Court.

#### *B.—Search-warrants.*

**96.** Where any Court has reason to believe that a person to whom a summons or order under section 94, or a requisition under section 95, paragraph one, has been or might be addressed, will not or would not produce the document or other thing as required by such summons or requisition, or where such document or other thing is not known to the Court to be in the possession of any person,

When search-warrant may be issued.

Act X.  
1882. or where the Court considers that the purposes of any inquiry, trial, or other proceeding under this Code, will be served by a general search or inspection,

Ch. VII.  
Ss. 97-99. it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

Nothing herein contained shall authorize any Magistrate, other than a District Magistrate or Chief Presidency Magistrate, to grant a warrant to search for a document in the custody of the Postal or Telegraph Authorities.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

98. If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate, or Magistrate of the first class, upon information, and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals, or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps, or for forging,

or that any forged documents, false seals, or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps, or for forging, are kept or deposited in any place,

he may, by his warrant, authorize any police-officer above the rank of a constable—

(a) to enter, with such assistance as may be required, such place, and

(b) to search the same in manner specified in the warrant, and

(c) to take possession of any property, documents, seals, stamps, or coins therein found, which he reasonably suspects to be stolen, unlawfully obtained, forged, false, or counterfeit, and also of any such instruments and materials as aforesaid, and

(d) to convey such property, documents, seals, stamps, coins, instruments, or materials before a Magistrate, or to guard the same on the spot, until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments, or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments, or materials to have been forged, falsified, or counterfeited, or the said instruments or materials to have been, or to be intended to be, used for counterfeiting coin or stamps or for forging.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the

list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

Act X.  
1882.

Ch. VII.  
Ss. 100-5.

*C.—Discovery of persons wrongfully confined.*

100. If any Presidency Magistrate, Magistrate of the first class, or Sub-divisional Magistrate, has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

*D.—General Provisions relating to Searches.*

101. The provisions of sections 43, 75, 77, 79, 82, 83, and 84, shall, so far as may be, apply to all search-warrants issued under section 96, section 98, or section 100.

102. Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

103. Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

The search shall be made in their presence, and a list of all things seized in the course of such search, and of the places in which they are respectively found, shall be prepared by such officer or other person, and signed by such witnesses, but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witness, shall be delivered to such occupant or person at his request.

*E.—Miscellaneous.*

104. Any Court may, if it thinks fit, im-  
Power to impound document, &c., produced. pound any document or other thing produced before it under this Code.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

Magistrate may direct search in his presence.

Act X.  
1882.

## PART IV.

## PREVENTION OF OFFENCES.

Ch. VIII.  
Ss. 106-8.

## CHAPTER VIII.

## OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

*A.—Security for keeping the Peace on Conviction.*

106. Whenever any person accused of rioting, assault, or other breach of the peace, or of abetting the same, or of assembling armed men, or taking other unlawful measures, with the evident intention of committing the same, or any person accused of committing criminal intimidation by threatening injury to person or property, is convicted of such offence before a High Court, a Court of Session, or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

*B.—Security for keeping the peace in other Cases, and Security for Good Behaviour.*

107. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, receives information that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is, within such limits, a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit to fix.

108. When any Magistrate not empowered to proceed under section 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under section 107.

A Magistrate before whom a person is sent under this section may, in his discretion, detain such person in custody until the completion of the inquiry hereinafter prescribed.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, receives information—

Act X. 1882.

(a) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

Ch. VIII. Ss. 109-14.

(b) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself, such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding six months, as the Magistrate thinks fit to fix.

110. Whenever a Presidency Magistrate, District Magistrate, "or Sub-Divisional Magistrate, or a Magistrate of the first class specially empowered in this behalf by the Local Government,"<sup>1</sup> receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker, or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or that he habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury, such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period, not exceeding three years, as the Magistrate thinks fit to fix.

111. The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

112. When a Magistrate acting under section 107, section 109, or section 110, deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character, and class of sureties (if any) required.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him, before the Court.

Provided that, whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

<sup>1</sup> The words quoted have been substituted by Act X. of 1886, s. 5, for the words, "Sub-Divisional Magistrate, or Magistrate of the first class specially empowered in this behalf by the Local Government," which were originally enacted.



Act. X.  
1882.  
Ch. VIII.  
Ss. 115-20.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

117. When an order under section 112 has been read or explained, Inquiry as to truth of information. under section 113, to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence as may appear necessary.

Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

For the purposes of this section, the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

118. If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided—

*first*—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112:

*secondly*—that the amount of every bond shall be fixed with due regard to the circumstances of the case, and shall not be excessive:

*thirdly*—that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

*C.—Proceedings in all Cases subsequent to Order to furnish Security.*

120. If any person in respect of whom an order requiring security is made under section 106 or section 118 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

In other cases such period shall commence on the date of such order.

**121.** The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be; and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Act X.  
1882.

Ch. VIII.  
Ss. 121-25.

**122.** A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

Power to reject sureties.

**123.** If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison, until such period expires, or until within such period he gives the security to the Court or Magistrate which or who made the order requiring it, or to the officer in charge of the jail in which the person so ordered is detained.

Imprisonment in default of security.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Proceedings when to be laid before High Court or Court of Session.

Such Court, after examining such proceedings, and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Imprisonment for failure to give security for keeping the peace shall be simple.

Kind of imprisonment.

Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

**124.** Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Power to release persons imprisoned for failing to give security.

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

**125.** The District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under this chapter by order of any Court in his District not superior to his Court.

Power of District Magistrate to cancel any bond for keeping the peace.

Act. X.  
1882.

Discharge of sureties.

Ch. IX.  
Ss. 126-30.

**126.** Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, to cancel any bond executed under this chapter within the local limits of his jurisdiction.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear, or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123, and 124, be deemed to be an order made under section 106 or section 108, as the case may be.

## CHAPTER IX.

### UNLAWFUL ASSEMBLIES.

**127.** Any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

This section applies to the police in the towns of Calcutta and Bombay.

**128.** If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army, or a volunteer enrolled under the Indian Volunteers' Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly, or that they may be punished according to law.

**129.** If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

**130.** When a Magistrate determines to disperse any such assembly by military force, he may require any Commissioned or Non-Commissioned Officer in command of any soldiers in Her Majesty's Army, or of any volunteers enrolled under the Indian Volunteers' Act, 1869, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly, or to have them punished according to law.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to persons and property, as may be consistent with dispersing the assembly, and arresting and detaining such persons.

**131.** When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any Commissioned Officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly, or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Act X.  
1882.Chap. X.  
Ss. 131-33.

**132.** No prosecution against any Magistrate, Military Officer, police-officer, soldier, or volunteer, for any act purporting to be done under this chapter, shall be instituted in any Criminal Court, except with the sanction of the Governor-General in Council; and

(a) no Magistrate or police-officer acting under this chapter in good faith,

(b) no officer acting under section 131 in good faith,

(c) no person doing any act in good faith in compliance with a requisition under section 128 or section 130, and

(d) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey, shall be deemed to have thereby committed an offence.

## CHAPTER X.

### PUBLIC NUISANCES.

**133.** Whenever a District Magistrate, a Sub-divisional Magistrate, or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a report or other information, and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river, or channel, which is, or may be, lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall, and thereby cause injury to persons living or carrying on business in the neighbourhood, or passing by, and that, in consequence, its removal, repair, or support is necessary, or

that any tank, well, or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing, or

Act X. 1882. controlling such building, substance, tank, well, or excavation, within a time to be fixed in the order,

Chap. X.  
Ss. 134-38.

to remove such obstruction or nuisance ; or  
to suppress or remove such trade or occupation ; or  
to remove such goods or merchandise ; or  
to prevent or stop the construction of such building ; or  
to remove, repair, or support it ; or  
to alter the disposal of such substance ; or  
to fence such tank, well, or excavation, as the case may be ; or  
to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside, or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

EXPLANATION.—A "public place" includes also property belonging to the State, camping-grounds, and grounds left unoccupied for sanitary and recreative purposes.

134. The order shall, if practicable, be served on the person against whom Service or notification of it is made in manner herein provided for service order. of a summons.

If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

135. The person against whom such order is made shall—

Person to whom order is addressed to obey ; (a) perform, within the time specified in the order, the act directed thereby ; or

(b) appear in accordance with such order, and either show cause against or show cause or claim the same, or apply to the Magistrate by whom it jury. was made to appoint a jury to try whether the same is reasonable and proper.

136. If such person does not perform such act, or appear and show Cause of his failing to do so. cause, or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code ; and the order shall be made absolute.

Procedure where he appears to show cause.

137. If he appears and shows cause against the order, the Magistrate shall take evidence in the matter.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceeding shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

Procedure where he claims jury.

138. On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(a) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant ;

(b) summon such foreman and members to attend at such place and time as the Magistrate thinks fit ; and

(c) fix a time within which they are to return their verdict.

**139.** If the jury, or a majority of the jurors, find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

Act X.  
1882.

Chap. X.  
Ss. 139-43.

In other cases, no further proceedings shall be taken.

**140.** When an order has been made absolute under section 136, section 137, or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods, or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

No suit shall lie in respect of anything done in good faith under this section.

**141.** If the applicant, by neglect or otherwise, prevents the appointment of the jury, or if, from any cause, the jury appointed do not return their verdict within the time fixed, or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

**142.** If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger, or to prevent such injury.

No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

**143.** A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law.

## CHAPTER XI.

## TEMPORARY ORDERS IN URGENT CASES OF NUISANCE.

**144.** In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate, or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order stating the material facts of the case, and served in manner provided by section 134, direct any person to abstain from a certain act, or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance, or injury, or risk of obstruction, annoyance, or injury, to any persons lawfully employed, or danger to human life, health, or safety, or a riot or an affray.

An order under this section may, in cases of emergency, or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Any Magistrate may rescind or alter any order made under this section by himself, or any Magistrate subordinate to him, or by his predecessor in office.

No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health, or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official gazette, otherwise directs.

## CHAPTER XII.

## DISPUTES AS TO IMMOVEABLE PROPERTY.

**145.** Whenever a District Magistrate, Sub-divisional Magistrate, or Magistrate of the first class, is satisfied, from a police-report, or other information, that a dispute concerning any tangible immoveable property, or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims, as respects the fact of actual possession of the subject of dispute.

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then in such possession of the said subject.

If the Magistrate decides that one of the parties is then in such possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction. Act X.  
1882.  
Ch. XIII.  
Ss. 146-49

Nothing in this section shall preclude any party so required to attend from showing that no such dispute as aforesaid exists, or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed.

146. If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession, of the subject of dispute, he may attach it until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do, or prevent the doing, of anything in or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter, and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done, or claiming that such thing may be done, obtains the decision of a competent Civil Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be:

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exercisable only at particular seasons, unless the right has been exercised during the season next before such institution.

148. Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

The report of the person so deputed may be read as evidence in the case.

When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146, or section 147, may direct by whom such costs shall be paid, whether by such party, or by any other party, to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

## CHAPTER XIII.

### PREVENTIVE ACTION OF THE POLICE.

149. Every police-officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent the commission of any cognizable offence.

Cr. Pr. Co. 5.



Act X.  
1882.  
Ch. XIV.  
Ss. 150-55.

**150.** Every police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

**151.** A police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate, and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

**152.** A police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark, or buoy, or other mark used for navigation.

**153.** Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures, or instruments for weighing, which are false.

If he finds in such place any weights, measures, or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

## PART V.

### INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

#### CHAPTER XIV.

**154.** Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police-station, shall be reduced to writing by him, or under his direction, and be read over to the informant; and every such information, whether given in writing, or reduced to writing, as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

**155.** When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter, in a book to be kept as aforesaid, the substance of such information; and refer the informant to the Magistrate.

No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case, or commit the same for trial, or of a Presidency Magistrate.

Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

**156.** Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV., relating to the place of inquiry or trial.

Act X.  
1882.

Ch. XIV.  
Ss. 156-61.

No proceeding of a police-officer in any such case shall, at any stage, be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

**157.** If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police-report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender :

Provided as follows :—

(a) when any information as to the commission of any such offence is given against any person by name, and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person, or depute a subordinate officer, to make an investigation on the spot :

(b) if it appear to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

In each of the cases mentioned in clauses (a) and (b), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of the first paragraph of this section.

**158.** Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

**159.** Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold an investigation or preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

**160.** Any police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case ; and such person shall attend as so required.

**161.** Any police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the

Act X. 1882. case, and may reduce into writing any statement made by the person so examined.

Ch. XIV. Such person shall be bound to answer truly all questions relating to  
Ss. 162-65. such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

162. No statement, other than a dying declaration, made by any person to a police-officer in the course of an investigation under this chapter, shall, if reduced to writing, be signed by the person making it, or "shall" be used as evidence against the accused.

Statements to police not to be signed or admitted in evidence.  
Nothing in this section shall be deemed to affect the provisions of section 27 of the Indian Evidence Act, 1872.

163. No police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat, or promise, as is mentioned in the Indian Evidence Act, 1872, section 24.

But no police-officer or other person shall prevent, by any caution or otherwise, any person from making, in the course of any investigation under this chapter, any statement which he may be disposed to make of his own free will.

164. Any Magistrate, not being a police-officer, may record any statement or confession made to him in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

No Magistrate shall record any such confession unless upon questioning the person making it he has reason to believe that it was made voluntarily; and when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it, and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.,  
Magistrate."

165. Whenever an officer in charge of a police-station, or a police-officer making an investigation, considers that the production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been, or might be, issued will not, or would not, produce such document or other thing as directed in the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

<sup>1</sup> This word has been inserted by Act X. of 1886, s. 6.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made, and the place to be searched and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

Act X.  
1882.

Ch. XIV.  
Ss. 166-69.

166. An officer in charge of a police-station may require an officer in

charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found (if any) to the officer at whose request the search was made.

167. Whenever it appears that any investigation under this chapter

cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation is well-founded, the officer in charge of a police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Magistrate.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

168. When any subordinate police-officer has made any investigation

under this chapter, he shall report the result of such investigation to the officer in charge of the police-station.

169. If, upon an investigation under this chapter, it appears to the

officer in charge of the police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report, and to try the accused, or commit him for trial.

Report of investigation by subordinate police-officer.

Release of accused when evidence deficient.

Act X.  
1882.

Ch. XIV.  
Ss. 170-72.

**170.** If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report, and to try the accused or commit him for trial; or, if the offence is bailable, and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed, and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a police-station forwards an accused person to a Magistrate, or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any), and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate, and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Sub-divisional Magistrate be mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference be given to such complainant or persons.

The day fixed under this section shall be the day whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Complainants and witnesses not to be required to accompany police-officer.

Complainants and witnesses not to be subjected to restraint.

**171.** No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer, or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond: Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

**172.** Every police-officer making an investigation under this chapter shall, day by day, enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them, merely because they are referred to by the Court; but

if they are used by the police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Indian Evidence Act, 1872, section 145, as the case may be, shall apply.

Act X.  
1882.

Ch. XIV.  
Ss. 175-74.

173. Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police-report a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information, and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

"Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Local Government, by general or special order, so directs, be submitted through that officer; and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation."

Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

Police to inquire and report on suicide, &c. 174. Every officer in charge of a police-station, on receiving information that a person—

- (a) has committed suicide, or
- (b) has been killed by another, or by an animal, or by machinery, or by an accident, or
- (c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence—

{ shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, or when, for any other reason, the police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

<sup>1</sup> This paragraph has been substituted by Act X. of 1886, s. 7, for the one originally enacted.

Act X.  
1882:

Ch. XV.  
Ss. 175-78.

In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests; namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

**175.** An officer in charge of a police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

**176.** When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (a), (b), and (c), any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

## PART VI.

### PROCEEDINGS IN PROSECUTIONS.

## CHAPTER XV.

### OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

#### A.—Place of Inquiry or Trial.

**177.** Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

**178.** Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any District may be tried in any Sessions Division:

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 526.

Act X.  
1882.

Ch. XV.  
Ss. 179-81.

**179.** When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

*Illustrations.*

(a.) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried either by X or Z.

(b.) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days, within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y or Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y, or Z.

(c.) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

**180.** When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

*Illustrations.*

(a.) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(b.) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(c.) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

**181.** The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, &c. may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief, or by any person who receives or retains the same knowing or having reason to believe it to be stolen.



Act X.  
1882. Place of inquiry or trial where scene of offence is uncertain,

Ch. XV.  
Ss. 182-86. or not in one district only;

or where offence is continuing,

or consists of several acts.

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

182. When it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or where an offence is a continuing one, and continues to be committed in more local areas than one, or where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

184. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office, or Arms and Ammunition, may be inquired into or tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

185. Whenever any doubt arises as to the Court by which any offence should, under the preceding provisions of this chapter, be inquired into or tried, the High Court, within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

In British Burma, when the offender is an European British subject, the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.

186. When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is, under some law for the time being in force, triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

When there are more Magistrates than one having such jurisdiction, and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

Act X.  
1882.

Ch. XV.  
Ss. 187-91.

**187.** If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same District other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of British subjects for offences committed out of British India.

**188.** When an European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject of her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found :

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India :

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in British India, shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

**189.** Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed, shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

**190.** In sections 188 and 189, the expression " Political Agent " defined. " Political Agent " means and includes—

(a) the principal officer representing the British Indian Government in any territory beyond the limits of British India ;

(b) any officer in British India appointed by the Governor-General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

*B.—Conditions requisite for Initiation of Proceedings.*

**191.** Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

Cognizance of offences by Magistrates.

Act X.  
1882;  
Ch. XV.  
Ss. 192-95.

(a) upon receiving a complaint of facts which constitute such offence ;  
(b) upon a police-report of such facts ;  
(c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under clause (a) or clause (b) of offences for which he may try or commit for trial.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (c) of offences for which he may try or commit for trial.

"When a Magistrate takes cognizance of an offence under clause (c), the accused, or, when there are several persons accused, any one of them, shall be entitled to require that the case shall, instead of being tried by such Magistrate, be either transferred to another Magistrate, or committed to the Court of Session."<sup>1</sup>

192. Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

Any District Magistrate may empower any Magistrate of the first class, who has taken cognizance of any case, to transfer it for inquiry or trial to any other specified Magistrate in his District who is competent under this Code to try the accused or commit him for trial ; and such Magistrate may dispose of the case accordingly.

193. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

Additional Sessions Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division by general or special order makes over to them for trial.

194. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any Letters Patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104.

195. No Court shall take cognizance—  
(a) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate ;

<sup>1</sup> The words quoted have been added by Act III. of 1884, s. 2.

(b) of any offence punishable under sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate ;

Act X.  
1882.

Ch. XV.  
Ss. 196-97.

(c) of any offence described in section 463, or punishable under sections 471, 475, or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person ; but Nature of sanction necessary. it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate ; and no such sanction shall remain in force for more than six months from the date on which it was given.

For the purposes of this section, every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court ; and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

**196.** No Court shall take cognizance of any offence punishable under Chapter VI. of the Indian Penal Code, except Prosecution for offences against the State. section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from, the Governor-General in Council, the Local Government, or some officer empowered by the Governor-General in Council in this behalf.

**197.** When any Judge, or any public servant not removeable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Power of Government as to prosecution.

Act X.  
1882.

Ch. XVI.  
Ss. 198-  
202.

**198.** No Court shall take cognizance of an offence falling under Chapter XIX. or Chapter XXI. of the Indian Penal Code, or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

**199.** No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

## CHAPTER XVI.

### OF COMPLAINTS TO MAGISTRATES.

**200.** A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing, and shall be signed by the complainant, and also by the Magistrate :

Provided as follows—

(a) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192 :

(b) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing ; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing :

(c) when the case has been transferred under section 192, and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

**201.** If the complaint has been made in writing, and the Magistrate is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper tribunal with an endorsement to that effect.

**202.** If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may, from time to time, authorize in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a police-officer, or by such other person, not being a Magistrate or police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

If such investigation is made by some person not being a Magistrate or a police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.

This section applies to the police in the towns of Calcutta and Bombay.

203. The Magistrate before whom a complaint is made, or to whom it has been transferred, may dismiss the complaint if, after examining the complainant, and considering the result of the investigation (if any) made under section 202, there is, in his judgment, no sufficient ground for proceeding.

Act X.  
1882.  
Ch. XVII.  
& XVIII.  
Ss. 203-8.

## CHAPTER XVII.

### OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

204. If, in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction.

Nothing in this section shall be deemed to affect the provisions of section 90.

205. Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

## CHAPTER XVIII.

### OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

206. Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, Magistrate of the first class, or any Magistrate empowered in this behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

208. The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take, in manner hereinafter provided, all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

Act X.  
1882.  
Ch. XVIII.  
Ss. 209-14.

If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process, unless, for reasons to be recorded, he deems it unnecessary to do so.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

**209.** When the evidence referred to in section 208, paragraphs 1 and 2, has been taken, and he has examined the accused person to be discharged. for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

**210.** When, upon such evidence being taken, and such examination (if framed. any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

As soon as the charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

**211.** The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown, a further list of the persons whom he wishes to be summoned to give evidence on such trial.

**212.** The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

**213.** When the accused, on being required to give in a list under section 211, has declined to do so, or when he has given in such list, and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

**214.** If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar

Person charged outside Presidency-towns jointly with European British subject.

charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

Act X.  
1882.  
Ch. XVIII.  
Ss. 215-18.

215. A commitment once made under section 213 or section 214 by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

Quashing commitments under sections 213 or 214.

216. When the accused has given in any list of witnesses under section 211, and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself, to appear before the Court to which the accused has been committed :

Summons to witnesses for defence when accused is committed.

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the clerk of the Crown, and such witnesses may be summoned accordingly.

Provided also that, if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may, before summoning him, require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

Refusal to summon unnecessary unless deposit made.

217. Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance, when called upon, at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Bond of complainants and witnesses.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

218. When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge ;

Commitment when to be notified.

and shall send the charge, the record of the inquiry, and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Charge, &c., to be forwarded to High Court or Court of Session.

When the commitment is made to the High Court, and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

English translation to be forwarded to High Court.



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Ss. 219-21.

**219.** The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

**220.** Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

## CHAPTER XIX.

### OF THE CHARGE.

#### *Form of Charges.*

**221.** Every charge under this Code shall state the offence with which the accused is charged.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date, and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

#### *Illustrations.*

(a.) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within exception 1, one or other of the three provisos to that exception applied to it.

(b.) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(c.) A is accused of murder, cheating, theft, extortion, adultery, or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(d.) A is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

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**222.** The charge shall contain such particulars as to the time and place

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Ss. 222-25.

Particulars as to time, of the alleged offence, and the person (if any) place, and person, against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

**223.** When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the acting offence must be stated. accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

#### *Illustrations.*

(a.) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(b.) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(c.) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(d.) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(e.) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(f.) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

**224.** In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Words in charge taken in sense of law under which offence is punishable.

**225.** No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded,

Effect of errors.  
at any stage of the case, as material, unless the accused was misled by such error or omission.

#### *Illustrations.*

(a.) A is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b.) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c.) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(d.) A is charged with the murder of Khoda Baksh on the 21st January 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

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Ss. 226-32.

(e.) A was charged with murdering Haidar Baksh on the 20th January 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

**226.** When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

**227.** Any Court may alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned, or the opinions of the assessors are expressed.

Every such alteration shall be read and explained to the accused.

**228.** If the charge framed or alteration made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence, or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

**229.** If the new or altered charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial, or adjourn the trial for such period as may be necessary.

**230.** If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

**231.** Whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon and examine, with reference to such alteration, any witness who may have been examined.

**232.** If any Appellate Court, or the High Court in the exercise of its powers of revision, or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

#### *Illustration.*

A is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge; and that he was misled in his defence by the

omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

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Ss. 233-35.

### *Joinder of Charges.*

**233.** For every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236, and 239.

### *Illustration.*

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

**234.** When a person is accused of more offences than one of the same kind, committed within the space of twelve months within year may be charged together. from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code, or of any special or local law.

**235. I.**—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

**II.**—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

**III.**—If several acts, of which one or more than one would, by itself, or themselves, constitute an offence, constitute, when combined, a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, or for any offence constituted by any one, or more, of such acts.

Nothing contained in this section shall affect the Indian Penal Code, section 71.

### *Illustrations*

to paragraph I.

(a.) A rescues B, a person in lawful custody, and, in so doing, causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and tried for, offences under sections 225 and 333 of the Indian Penal Code.

(b.) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.

(c.) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code.

(d.) A has in his possession several seals, knowing them to be counterfeit, and intending to use them for the purpose of committing several forgeries, punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

(e.) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or

Act. X. 1882. lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.

Ch. XIX. an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code.

Ss. 236-37. (g.) A, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325, and 152 of the Indian Penal Code.

(h.) A threatens B, C, and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.

The separate charges referred to in illustrations (a) to (h) respectively may be tried at the same time.

to paragraph II.

(i.) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.

(j.) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.

(k.) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.

(l.) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.

to paragraph III.

(m.) A commits robbery on B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392, and 394 of the Indian Penal Code.

236. If a single act, or series of acts, is of such a nature that it is doubtful which of several offences the facts which offence has been committed. can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

#### Illustration.

A is accused of an act which may amount to theft, or receiving stolen property or criminal breach of trust, or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust, and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust, or cheating.

237. If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

#### Illustrations.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

**238.** When a person is charged with an offence consisting of several particulars, a combination of some only of which is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

When an offence proved in particular, constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

When a person is charged with an offence, and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

Nothing in this section shall be deemed to authorize a conviction of any offence, referred to in section 198 or section 199, when no complaint has been made, as required by that section.

*Illustrations.*

(a.) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(b.) A is charged under section 325 of the Indian Penal Code with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

**239.** When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges.

*Illustrations.*

(a.) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(b.) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(c.) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with one theft, and B alone with the two other thefts.

**240.** When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons-cases.

**241.** The following procedure shall be observed by Magistrates in the trial of summons-cases.

**242.** When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he

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Ss. 243-50.

**243.** If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

**244.** If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused, and take all such evidence as he produces in his defence.

The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

**245.** If the Magistrate, upon taking the evidence referred to in section 244, and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Sentence.

If he finds the accused guilty, he shall pass sentence upon him according to law.

**246.** A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

**247.** If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

**248.** If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

**249.** In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

**250.** If, in any case instituted upon complaint, a Magistrate acquits the accused under section 245 or section 247, and is of opinion that the complaint was frivolous or vexatious, he may, in his discretion, by his order of acquittal, direct the

complainant to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit.

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The sum so awarded shall be recoverable as if it were a fine: Provided that, if it cannot be realized, the imprisonment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs.

Ch. XXI.  
Ss. 251-56.

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

## CHAPTER XXI.

### OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in warrant-cases.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

252. When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution.

Evidence of prosecution.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

253. If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if un rebutted, would warrant his conviction, the Magistrate shall discharge him.

Discharge of accused.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

254. If, when such evidence and examination have been taken and made, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Charge to be framed when offence appears proved.

255. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

Plea.

If the accused pleads guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.

256. If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts.

Defence.

If the accused puts in any written statement, the Magistrate shall file it with the record.



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Ss: 257-60.

**257.** If the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purposes of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process, unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

**258.** If, in any case under this chapter in which a charge has been framed, the Magistrate finds the accused not guilty, acquittal.

If, in any such case, the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.

**259.** When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

## CHAPTER XXII.

### OF SUMMARY TRIALS.

**260.** Notwithstanding anything contained in this Code,

- (1) the District Magistrate,
- (2) any Magistrate of the first class specially empowered in this behalf by the Local Government, and
- (3) any Bench of Magistrates invested with the powers of a Magistrate of the first class, and specially empowered in this behalf by the Local Government, may try, in a summary way, all or any of the following offences:—
  - (a.) Offences not punishable with death, transportation, or imprisonment for a term exceeding six months;
  - (b.) Offences relating to weights and measures, under sections 264, 265, and 266 of the Indian Penal Code; *voluntarily causing hurt*
  - (c.) Hurt, under section 323 of the same Code; *172 or 173*
  - (d.) Theft, under sections 379, 380, or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;
  - (e.) Receiving or retaining stolen property, under section 411 of the same Code, where the value of such property does not exceed fifty rupees;
  - (f.) Assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees;
  - (g.) Mischief, under section 427 of the same Code;
  - (h.) House-trespass, under section 448 of the same Code; *172 or 173*
  - (i.) Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code; *272*
  - (j.) Abetment of any of the foregoing offences;

(k) An attempt to commit any of the foregoing offences, when such attempt is an offence :

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

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Ss. 261-65.

**261.** The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences :—

Power to invest Bench of Magistrates invested with less power.

(a.) Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426, and 447 :

(b.) Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month ;

(c.) Abetment of any of the foregoing offences ;

(d.) An attempt to commit any of the foregoing offences, when such attempt is an offence.

**262.** In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter.

Limit of imprisonment.

**263.** In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge ; but he or they shall enter in such form as the Local Government may direct the following particulars :—

- (a) the serial number ;
- (b) the date of the commission of the offence ;
- (c) the date of the report or complaint ;
- (d) the name of the complainant (if any) ;
- (e) the name, parentage, and residence of the accused ;
- (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d), clause (e), or clause (f) of section 260, the value of the property in respect of which the offence has been committed ;
- (g) the plea of the accused and his examination (if any) ;
- (h) the finding, and, in the case of a conviction, a brief statement of the reasons therefor ;
- (i) the sentence or other final order ; and
- (j) the date on which the proceedings terminated.

**264.** In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

Such judgment shall be the only record in cases coming within this section.

**265.** Records made under section 263, and judgments recorded under section 264, shall be written by the presiding officer, either in English, or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Language of record and judgment.

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Ss. 266-71.

The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an official clerk. Bench may be authorized to employ clerk.  
 cer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

## CHAPTER XXIII.

### OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

#### A.—Preliminary.

**266.** In this chapter, except in "sections 276 and 307,"<sup>1</sup> the expression "High Court" defined. section "High Court" means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes the Chief Court of the Panjáb and such other Courts as the Governor-General in Council may, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter.

Trials before High Court to be by jury.

**267.** All trials under this chapter before a High Court shall be by jury ;

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so direct, be by jury.

Trial before Court of Session to be by jury or with assessors.

**268.** All trials before a Court of Session shall be either by jury, or with the aid of assessors.

**269.** The Local Government may order trials before Court of Session to be by jury.

The Local Government may, by order in the official *Gazette*, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may revoke or alter such order.

When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors, for such of them as are not triable by jury.<sup>2</sup>

Trial before Court of Session to be conducted by Public Prosecutor.

**270.** In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

#### B.—Commencement of Proceedings.

**271.** When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty.

If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

<sup>1</sup> The words quoted have been substituted by Act X. of 1886, s. 8, for the word and figures "section 307," which were originally enacted.

<sup>2</sup> This paragraph has been substituted by Act X. of 1886, s. 9, for the one originally enacted.

**272.** If the accused refuses to, or does not plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed, and to try the case : Act X.  
1882.  
Ch. XXIII.  
Ss. 272-77.

**Refusal to plead or claim to be tried.** **Provided that,** subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

**Trial by same jury or assessors of several offenders in succession.**

**273.** In trials before the High Court, when it appears to the High Court at any time before the commencement of the trial of the person charged, that any charge, or any portion thereof, is clearly unsustainable, the Judge may make on the charge an entry to that effect.

**Entry on unsustainable charge.**

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

**Effect of entry.**

### C.—Choosing a Jury.

**274.** In trials before the High Court the jury shall consist of nine persons.

**Number of jury.**

In trials by jury before the Court of Session, the jury shall consist of such uneven number, not being less than three, or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may direct.

**275.** In a trial by jury, before the Court of Session, of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

**Jury for trial of persons not Europeans or Americans before Court of Session.**

**276.** The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as the High Court may, from time to time, by rule direct :

**Jurors to be chosen by lot.**

**Proviso.**

**Provided that—**

*first*, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed ;

**Existing practice maintained.**

*secondly*, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present ; and

**Persons not summoned when eligible.**

**Trials before special jurors.**

*thirdly*, in the Presidency-towns—

(a) if the accused person is charged with having committed an offence punishable with death, or  
(b) if in any other case a Judge of the High Court so directs, the jurors shall be chosen from the special jury-list hereinafter prescribed.

**277.** As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror.

**Names of jurors to be called.**

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated.

**Objection to jurors.**

Act X.  
1882.  
Ch. XXIII.  
Ss. 278-82.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown, and eight on behalf of the person or all the persons charged.

278. Any objection taken to a juror on any of the following grounds; if made out to the satisfaction of the Court, shall be allowed:—

- Grounds of objection.
- (a) some presumed or actual partiality in the juror;
  - (b) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one, or above the age of sixty years;
  - (c) his having, by habit or religious vows, relinquished all care of worldly affairs;
  - (d) his holding any office in or under the Court;
  - (e) his executing any duties of police or being entrusted with police-duties;
  - (f) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;
  - (g) his inability to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted;
  - (h) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

279. Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons, and chosen in manner provided by section 275; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 178 and allowed.

280. When the jurors have been chosen, they shall appoint one of their number to be foreman.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873. *See p. 202 Supreme C. 11*

282. If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language

Procedure when juror ceases to attend, &c.

Swearing of jurors.

Foreman of jury.

Decision of objection.

Supply of place of juror against whom objection allowed.

in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged, and a new jury chosen.

Act X.  
1882.

In each of such cases the trial shall commence anew.

Ch. XXIII.  
Ss. 283-89.

Discharge of jury in case of sickness of prisoner.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

#### *D.—Choosing Assessors.*

284. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

Assessors how chosen.

285. If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

#### *E—Trial to close of Cases for Prosecution and Defence.*

286. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Examination of witnesses. The prosecutor shall then examine his witnesses.

Examination of accused before Magistrate to be evidence.

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.

288. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

Evidence given at preliminary inquiry admissible.

289. When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

Procedure after examination of witnesses for prosecution.

If he says that he does not, the prosecutor may sum up his case; and if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

Act X:  
1882.

Ch. XXIII.  
Ss. 290-97.

If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case, and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

**290.** The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any), and after their cross-examination and re-examination (if any) may sum up his case.

**291.** The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

**292.** If the accused, or any of the accused, has stated, when asked under section 289, that he means to adduce evidence, the prosecutor shall be entitled to reply.

**293.** Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

**294.** If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined, and re-examined in the same manner as any other witness.

**295.** If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

**296.** The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

#### *F.—Conclusion of Trial in Cases tried by Jury.*

**297.** In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Duty of Judge.

298. In such cases, it is the duty of the Judge—

Act X.  
1882.

(a) to decide all questions of law arising in the course of the trial, and specially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(b) to decide upon the meaning and construction of all documents given in evidence at the trial;

(c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(d) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

#### Illustrations.

(a) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(b.) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of jury.

299. It is the duty of the jury—

(a) to decide which view of the facts is true, and then to return the verdict which, under such view, ought, according to the direction of the Judge, to be returned;

(b) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(c) to decide all questions which, according to law, are to be deemed questions of fact;

(d) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

#### Illustrations.

(a.) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(b.) The question is whether a person entertained a reasonable belief on a particular point—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Retirement to consider.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.



Act X.  
1882.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

Ch. XXIII.  
Ss. 301-7.

**301.** When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Delivery of verdict.

**302.** If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Procedure where jury differ.

**303.** Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Verdict to be given on each charge.

Judge may question jury. Such questions, and the answers to them, shall be recorded.

Questions and answers to be recorded.

**304.** When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Amending verdict.

**305.** When, in a case tried before a High Court, the jury are unanimous in their opinion, or when as many as six are of one opinion, and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

Verdict in High Court when to prevail.

When, in any such case, the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

**306.** When, in a case tried before the Court of Session, the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

Verdict in Court of Session when to prevail.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

**307.** If, in any such case, the Sessions Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which the accused has been tried, so completely that he considers it necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

Procedure where Sessions Judge disagrees with verdict.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody, or admit him to bail.

In dealing with the case so submitted, the High Court may exercise any of the powers which it may exercise on an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

*G.—Re-trial of Accused after Discharge of Jury.*

Act X.  
1882.

**308.** Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

*H.—Conclusion of Trial in Cases tried with Assessors.*

**309.** When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

The Judge shall then give judgment, but, in doing so, shall not be bound to conform to the opinions of the assessors.

If the accused is convicted, the Judge shall pass sentence on him according to law.

*I.—Procedure in Case of Previous Conviction.*

**310.** In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction for any offence, the procedure laid down in sections 271, 286, 305, 306, and 309, shall be modified as follows :—

(a.) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(b.) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

(c.) If he answers that he has been so previously convicted, the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

*J.—List of Jurors for High Court, and summoning Jurors for that Court.*

**311.** In each Presidency-town, the jurors' book for the year current when this Code comes into force shall be taken as containing a correct list of persons liable to serve as jurors under this chapter.

Those persons whose names are entered in the jurors' book, as being liable to serve on special juries only, shall be deemed to be persons privileged and liable to serve only as special jurors under this chapter during the year for which the said list has been prepared.

**312.** The names of not more than "four" hundred persons shall, at any one time, be entered in the special jurors' list

<sup>1</sup> The word "four" has been substituted for the word "two" as originally enacted. See Act V. of 1887, s. 2.

Act X.  
1882.

**313.** The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

Lists of common and special jurors.

Ch. XXIII.  
Ss. 313-17.

- (a) a list of all persons liable to serve as common jurors; and  
(b) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character, and education of the persons whose names are entered therein.

No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor-General in Council in the case of the High Court at Calcutta, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

The Clerk of the Crown shall, subject to such rules as aforesaid, have Discretion of officer preparing lists. full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

**314.** Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

**315.** Out of the persons named in the revised list aforesaid, there shall be summoned for each sessions in each Presidency-town at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

No person shall be so summoned more than once in six months, unless the number cannot be made up without him.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such Supplementary summons. number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

**316.** Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

**317.** In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting as the Court considers to be necessary to make up the jurors required for the trial of persons charged with offences before the High Court as aforesaid.

Military jurors.

All officers so summoned shall be liable to serve on such juries, notwithstanding anything contained in this Code ; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

Act X.  
1882.

Ch. XXIII.  
Ss. 318-21.

**318.** Any person summoned under section 315, section 316, or section 317, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, Failure of jurors to attend. departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt, and be liable, by order of the Judge, to such fine as he thinks fit, and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

*K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.*

**319.** All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the district in which they reside.

*Exemptions.*

**320.** The following persons are exempt from liability to serve as jurors or assessors, namely :—

- (a.) Officers in civil employ superior in rank to a District Magistrate ;
- (b.) Judges ;
- (c.) Commissioners and Collectors of Revenue or Customs ;
- (d.) Persons engaged in the Preventive Service in the Customs Department ;
- (e.) Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty ;
- (f.) Persons actually officiating as priests or ministers of their respective religions ;
- (g.) Persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors ;
- (h.) Surgeons and others who openly and constantly practise the medical profession ;
- (i.) Persons employed in the Post-office and Telegraph Departments ;
- (j.) Persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641 ;
- (k.) Other persons exempted by the Local Government from liability to serve as jurors or assessors.

**321.** The Sessions Judge, and the Collector of the District or such other officer as the Local Government appoints in this behalf, shall prepare and make out, in alphabetical order, a list of persons liable to serve as jurors or assessors, and qualified, in the judgment of the Sessions Judge and Collector or other officer as aforesaid, to serve as such, and not likely to be successfully objected to under section 278, clauses (b) and (h), both inclusive.

The list shall contain the name, place of abode, and quality or business of every such person ; and if the person is an European or an American, the list shall mention the race to which he belongs.

Act X.  
1882.

**322.** Copies of such list shall be struck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

Publication of list.

**323.** To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

Objection to list.

**324.** For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

Revision of list.

In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid, and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid, in preparing and revising the list, shall be final.

Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

Annual revision of list.

**325.** The list so prepared and revised shall be again revised once in every year.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

**326.** The Sessions Judge shall ordinarily, three days at least before the day which he may, from time to time, fix for holding the sessions, send a letter to the District Magistrate, requesting him to summon as many persons named in the said revised list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

**327.** The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever, for other reasons, such direction is found to be necessary.

Power to summon another set of jurors or assessors.

**328.** Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

Form and service of summons.

Act X. 1882.  
Ch. XXIII.  
Ss. 328-35.

**329.** Where any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

When Government or Railway servant may be excused.

**330.** The Court of Session may, for reasonable cause, excuse any juror or assessor from attendance at any particular session.

Court may excuse attendance of juror or assessor.

**331.** At each session, the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

List of jurors and assessors attending.

Such list shall be kept with the list of the jurors and assessors as revised under section 324.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

**332.** Any person summoned to attend as a juror or as an assessor, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Penalty for non-attendance of juror or assessor.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

*L.—Special Provisions for High Courts.*

**333.** At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate-General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal, unless the presiding Judge otherwise directs.

Power of Advocate-General to stay prosecution.

**334.** For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days, and at such convenient intervals, as the Chief Justice of such Court from time to time appoints.

Time of holding sittings.

**335.** The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor-General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

Place of holding sittings.

Act X.  
1882.

Ch. XXIV.  
Ss. 336-39. But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor-General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

336. The High Court may direct that all European British subjects and persons liable to be tried by it under section 214, who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court; or direct that they shall be tried at a particular place named.

## CHAPTER XXIV.

### GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

337. In the case of any offence triable exclusively by the Court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the offence, or with the sanction of the District Magistrate, any other Magistrate, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial by the Court of Session or High Court, as the case may be.

Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when any Magistrate has made such tender, and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

339. Where a pardon has been tendered under section 337 or section 338, and any person who has accepted such tender has, either by wilfully concealing anything essential, or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

The statement made by a person who has accepted a tender of pardon may be given in evidence against him, when the pardon has been withdrawn under this section. Act X.  
1882.

No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court. Ch. XXIV.  
Ss. 340-44.

Right of accused to be defended. **340.** Every person accused before any Criminal Court may of right be defended by a pleader.

**341.** If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

**342.** For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

The answers given by the accused may be taken into consideration, in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

No oath shall be administered to the accused. ✓

**343.** Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

**344.** If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same, on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody.

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

**EXPLANATION.**—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.



Act X.  
1882.

345. The offences punishable under the sections of the Indian Penal Code, described in the first two columns of the

Compounding offences.

Table next following, may be compounded by the persons mentioned in the third column of that Table :—

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Uttering words, &c., with deliberate intent to wound the religious feelings of any person.	208	The person whose religious feelings are intended to be wounded.
Causing hurt ... ..	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force ...	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour ... ..	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass ... ..	447	The person in possession of the property trespassed upon.
House-trespass ... ..	448	
Criminal breach of contract of service ...	490, 491, 492	The person with whom the offender has contracted.
Adultery ... ..	497	The husband of the woman.
Enticing or taking away or detaining with a criminal intent a married woman ...	498	
Defamation ... ..	500	The person defamed.
Printing or engraving matter knowing it to be defamatory ... ..	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter ...	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.

Ch. XXIV.  
S 345,

The offence of voluntarily causing hurt, voluntarily causing grievous hurt, causing hurt by an act which endangers life, or causing grievous hurt by an act which endangers life, punishable under section 324, section 335, section 337, or section 338, of the Indian Penal Code, may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

Act X.  
1882.  
Ch. XXIV.  
Ss. 346-49.

When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot, or a lunatic, any person competent to contract on his behalf may compound such offence.

The composition of an offence under this section shall have the effect of an acquittal of the accused.

No offence not mentioned in this section shall be compounded.

**346.** If, in the course of an inquiry or a trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings, and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

**347.** If, in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceeding, and commit the accused under the provisions hereinbefore contained.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

**348.** Whoever, having been convicted of an offence punishable under Chapter XII. or Chapter XVII. of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court, as the case may be; or, in districts in which the District Magistrate has been invested with powers under section 30, placed on his trial before such Magistrate.

**349.** Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Ma-

Procedure when Magistrate cannot pass sentence sufficiently severe.

Act X.  
1882.

Ch. XXIV.  
Ss. 350-52.

Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion, and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence, or order in the case as he thinks fit, and as is according to law: Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

**350.** Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has, and who exercises, such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses, and re-commence the inquiry or trial:

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

Provided as follows:—

(a.) In any trial, the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard:

(b.) The High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate, may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 346.

**351.** Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of examination, for any offence of which such Court can take cognizance, and which, from the evidence, he may appear to have committed; and may be proceeded against as though he had been arrested or summoned.

When the detention takes place in the course of an inquiry under Chapter XVIII., or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.

**352.** The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them.

Provided that the presiding Judge or Magistrate may, if he thinks fit, order, at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES  
AND TRIALS.

Act X.  
1882.

Ch. XXV.  
Ss. 553-56.

**353.** Except as otherwise expressly provided, all evidence taken under Evidence to be taken in presence of accused. Chapters XVIII., XX., XXI., XXII., and XXIII., shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

**354.** In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

**355.** In summons-cases tried before a Magistrate other than a Presidency Magistrate, and in cases of the offences mentioned in section 260, clauses (b) to (k), both inclusive, when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

**356.** In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates), and in all inquiries under Chapters XII. and XVIII., the evidence of each witness shall be taken down in writing in the language of the Court by the Magistrate or Sessions Judge, or in his presence and hearing, and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

Act X.  
1882.

Ch. XXV.  
Ss. 357-61.

**357.** The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record :

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

**358.** In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

Mode of recording evidence  
under section 356 or section  
357.

**359.** Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

**360.** As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

**361.** Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader, and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

**362.** In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate, and shall form part of the record.

Record of evidence in Presidency Magistrate's Courts.

Act X. 1882.  
Ch. XXV.  
Ss. 362-65.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35, on the same occasion, shall, for the purposes of this section, be considered as one sentence.

**363.** When a Sessions Judge or Magistrate has recorded the evidence of a witness, he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Remarks respecting demeanour of witness.

**364.** Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of the Panjáb, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full in the language in which he is examined, or if that is not practicable, in the language of the Court or English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

Examination of accused how recorded.

When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

**365.** Every High Court established by Royal Charter, and the Chief Court of the Panjáb, may, from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

Record of evidence in High Court.

Act X.  
1882.

Ch. XXVI.  
Ss. 366-70.

## CHAPTER XXVI.

## OF THE JUDGMENT.

**366.** The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court either immediately or at some subsequent time, of which due notice shall be given to the parties or their pleaders; and the accused shall, if in custody, be brought up, or, if not in custody, shall be required to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with, and the sentence is one of fine only, in which case it may be pronounced in the presence of his pleader.

**367.** Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon, and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted, and direct that he be set at liberty.

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall, in its judgment, state the reason why sentence of death was not passed:

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

**368.** When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

No sentence of transportation shall specify the place to which the person sentenced is to be transported.

**369.** No Court, other than a High Court, when it has signed its judgment, shall alter or review the same, except as provided in section 395, or to correct a clerical error.

**370.** Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars:—

- (a) the serial number of the case;
- (b) the date of the commission of the offence;
- (c) the name of the complainant (if any);
- (d) the name of the accused person, and (except in the case of an European British subject) his parentage and residence;

- (e) the offence complained of or proved ;  
 (f) the plea of the accused and his examination (if any) ;  
 (g) the final order ;  
 (h) the date of such order ; and  
 (i) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Act X.  
1882.

Chap.  
XXVII.  
Ss. 371-75.

**371.** The judgment shall be explained to the accused, and on his application a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

**372.** The original judgment shall be filed with the record of proceedings, and where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

**373.** In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

## CHAPTER XXVII.

### OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

**374.** When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

**375.** If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.



Act X.  
1882.

Power of High Court to confirm sentence or annul conviction.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

Chap.  
XXVII.  
Ss. 376-80.

(a) may confirm the sentence, or pass any other sentence warranted by law, or

(b) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(c) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

377. In every case so submitted, the confirmation of the sentence, or

Confirmation of new sentence to be signed by two Judges.

any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed, and signed by at least two of them.

378. When any such case is heard before a Bench of Judges, and such

Procedure in case of difference of opinion.

Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

379. In cases submitted by the Court of Session to the High Court for

Procedure in cases submitted to High Court for confirmation.

the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

380. When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation, such Sessions Judge—

(a) may confirm the sentence, or pass any other sentence which the lower Court might have passed ; or

(b) may annul the conviction, and convict the accused of any offence of which the lower Court might have convicted him, or order a new trial on the same or an amended charge ; or

(c) may acquit the accused ; or

(d) if he thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may make such inquiry or take such evidence himself, or direct such inquiry or evidence to be made or taken.

Unless the Court of Session otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or evidence taken ; and, when the sentence has been submitted by an Assistant Sessions Judge, such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors.

When the inquiry and the evidence (if any) are not made and taken by the Court of Session, the result of such inquiry and the evidence shall be certified to such Court.

## CHAPTER XXVIII.

## OF EXECUTION.

Act X.  
1882.Chap.  
XXVIII.  
Ss. 381-90.

**381.** When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

**382.** If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life.

**383.** Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

**384.** Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

**385.** When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

**386.** Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

**387.** Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

**388.** When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment, and may release the offender on his executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond, and, in the event of the fine not having been realized, the Court may direct the sentence of imprisonment to be carried into execution at once.

**389.** Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence or by his successor in office.

**390.** When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Act X.  
1882.

Chap.  
XXVIII.  
Ss. 391-96.

**391.** When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal be made within that time, until the sentence is confirmed by the Appellate Court; but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

The whipping shall be inflicted in the presence of the officer in charge of the jail: unless the Judge or Magistrate orders it to be inflicted in his own presence.

**392.** In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Limit of number of stripes.

In no case shall such punishment exceed thirty stripes.

Not to be executed by instalments.

Exemptions.

**393.** No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping (namely):—

(a) females;

(b) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;

(c) males whom the Court considers to be more than forty-five years of age.

**394.** The punishment of whipping shall not be inflicted unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

**395.** In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

**396.** When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine, or whipping, shall, subject to the provisions hereinbefore contained,

Execution of sentences on escaped convicts.

take effect immediately, and, if of imprisonment, penal servitude, or transportation, shall take effect according to the following rules, that is to say:—

If the new sentence is severer in its quality than the sentence which such convict was undergoing when escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude, or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

**EXPLANATION.**—For the purposes of this section—

(a) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(b) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(c) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

**397.** When a person already undergoing a sentence of imprisonment,

Sentence on offender already sentenced for another offence. penal servitude, or transportation, is sentenced to imprisonment, penal servitude, or transportation, such imprisonment, penal servitude, or transportation, shall commence at the expiration of the imprisonment, penal servitude, or transportation to which he has been previously sentenced:

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

**398.** (1) Nothing in section 396 or section 397 shall be held to excuse

Provisions supplemental to sections 35, 396, and 397. any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(2) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is, after its execution, to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation, or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.<sup>1</sup>

**399.** When any person under the age of sixteen years is sentenced by

Confinement of youthful offenders in reformatories. any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

Act X.  
1882.

Chap.  
XXVIII.  
Ss. 397-99.

<sup>1</sup> This section has been substituted by Act X. of 1886, s. 10, for the one originally enacted.

Act X.  
1882.

All persons confined under this section shall be subject to the rules so prescribed.

Ch. XXIX.  
and XXX.  
Ss. 400-3.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

## CHAPTER XXIX.

### OF SUSPENSIONS, REMISSIONS, AND COMMUTATIONS OF SENTENCES.

401. When any person has been sentenced to punishment for an offence, the Governor-General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence, or remit the whole or any part of the punishment to which he has been sentenced.

Whenever an application is made to the Governor-General in Council or the Local Government for the suspension or remission of a sentence, the Governor-General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

If any condition on which a sentence has been suspended or remitted is, in the opinion of the Governor-General in Council or of the Local Government, as the case may be, not fulfilled, the Governor-General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant, and remanded to undergo the unexpired portion of the sentence.<sup>1</sup>

The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.<sup>1</sup>

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites, or remissions of punishment.

402. The Governor-General in Council, or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it :—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

## CHAPTER XXX.

### OF PREVIOUS ACQUITTALS OR CONVICTIONS.

403. A person who has once been tried by a Court of competent jurisdiction for an offence, and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for

<sup>1</sup> These two paras. have been substituted by Act X. of 1886, s. 11, for the one originally enacted.

which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, paragraph one.

A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

**EXPLANATION.**—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

#### *Illustrations.*

(a.) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(b.) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(c.) A is tried for causing grievous hurt, and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(d.) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(e.) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph three of this section.

(f.) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(g.) A, B, and C, are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B, and C, may afterwards be charged with, and tried for, dacoity on the same facts.

## PART VII.

### OF APPEAL, REFERENCE, AND REVISION.

#### CHAPTER XXXI.

##### OF APPEALS.

**404.** No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

**405.** Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order rejecting application for restoration of attached property.

Act X:  
1882.

Ch. XXXI.  
Ss. 404-5.

Act X.  
1882.  
Ch. XXXI.  
Ss. 406-13.

**406.** Any person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under section 118, may appeal to the District Magistrate.

**407.** Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him, and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals shall be presented to such Subordinate Magistrate, or, if already presented to the District Magistrate, shall be transferred to such Subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

**408.** Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate, or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session :

Provided as follows :—

(a) when in any case an Assistant Sessions Judge or a District Magistrate passes any sentence which is subject to the confirmation of the Court of Session, every appeal in such case shall lie to the High Court, but shall not be presented until the case has been disposed of by the Court of Session ;

(b) any European British subject so convicted may, at his option, appeal either to the High Court or the Court of Session.

**409.** An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional or Joint Sessions Judge.

**410.** Any person convicted on a trial held by a Sessions Judge, or an Additional or a Joint Sessions Judge, may appeal to the High Court.

**411.** Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months, or to fine exceeding two hundred rupees.

**412.** Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty, and has been convicted by a Court of Session or a Presidency Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.

**413.** Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

**EXPLANATION.**—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed. Act. X.  
1882.

✓ **414.** Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily, in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only. Ch. XXXI.  
Ss. 414-21.

✓ **415.** An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

**EXPLANATION.**—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

**416.** Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII. on European British subjects.

**417.** The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

✓ **418.** An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

**EXPLANATION.**—The alleged severity of a sentence shall, for the purposes of this section, be deemed to be a matter of law.

**419.** Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

**420.** If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

**421.** On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily: Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.



Act X.  
1882.

Ch. XXXI.  
Ss. 422-26.

**422.** If the Appellate Court does not reject the appeal summarily, it

Notice of appeal.

shall cause notice to be given to the appellant or his pleader, and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal ;

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

**423.** The Appellate Court shall then send for the record of the case,

Powers of Appellate Court  
in disposing of appeal.

if such record is not already in Court. After perusing such record, and hearing the appellant, or his pleader, if he appears, and the Public Prosecutor, if he appears, and in case of an appeal under section 417, the accused, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal, or may—

(a) in an appeal from an order of acquittal, reverse such order, and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty, and pass sentence on him according to law ;

(b) in an appeal from conviction (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3) with or without such reduction, and with or without altering the finding, alter the nature of the sentence, but not so as to enhance the same ;

(c) in an appeal from any other order, alter or reverse such order :

(d) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

**424.** The rules contained in Chapter XXVI. as to the judgment of a

Judgments of subordinate  
Appellate Courts.

Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court :

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

**425.** Whenever a case is decided on appeal by the High Court under

Order by High Court on  
appeal to be certified to lower  
Court.

this chapter, it shall certify its judgment or order to the Court by which the finding, sentence, or order appealed against was recorded or passed. If the finding, sentence, or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court ; and, if necessary, the record shall be amended in accordance therewith.

**426.** Pending any appeal by a convicted person, the Appellate Court

Suspension of sentence pend-  
ing appeal.

Release of appellant on bail.

may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended, and, if he is in confinement, that he be released on bail or on his own bond.

The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

Act X.  
1882.

When the appellant is ultimately sentenced to imprisonment, penal servitude, or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Chap.  
XXXII.  
Ss. 427-33.

**427.** When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

**428.** In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

The taking of evidence under this section shall, for the purposes of Chapter XXV., be deemed to be an inquiry.

**429.** When the Judges composing the Court of appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

**430.** Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

**431.** Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter shall finally abate on the death of the appellant.

## CHAPTER XXXII.

### OF REFERENCE AND REVISION.

**432.** A Presidency Magistrate may, if he thinks fit, refer, for the opinion of the High Court, any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference; and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

**433.** When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Act X.  
1882.

Direction as to costs.

The High Court may direct by whom the costs of such reference shall be paid.

**434.** When any person has, in a trial before a Judge of a High Court

Chap.  
XXXII.  
Ss. 434-37. Power to reserve questions arising in original jurisdiction of High Court.

consisting of more Judges than one, and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer, for the decision of a Court consisting of two or more Judges of such Court, any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or,

Procedure when question reserved.

if the Judge thinks fit, be admitted to bail ;

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit.

**435.** The High Court or any Court of Session, or District Magistrate,

Power to call for records of inferior Courts.

or any Sub-divisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction, for the purpose of satisfying itself or himself as to the correctness, legality, or propriety of any finding, sentence, or order recorded or passed, and as to the regularity of any proceedings of such inferior Court.

If any Sub-divisional Magistrate acting under this section considers that any such finding, sentence, or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

Orders made under sections 143 and 144, and proceedings under section 176, are not proceedings within the meaning of this section.

**436.** When, on examining the record of any case under section 435 or

Power to order commitment.

otherwise, the Court of Session or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged by the inferior Court, the Court of Session or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged :

Provided as follows—

(a) that an accused has had an opportunity of showing cause to such Court or Magistrate why the commitment should not be made :

(b) that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

**437.** On examining any record under section 435 or otherwise, the

Power to order inquiry.

High Court or Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203, or into the case of any accused person who has been discharged.

Act X.  
1882.Chap.  
XXXII.  
Ss. 438-42.

**438.** The Court of Session or District Magistrate may, if it or he thinks fit, on examining, under section 435 or otherwise, the record of any proceeding, report for the orders of the High Court the results of such examination, and, when such report contains a recommendation that a sentence be reversed, may order that the execution of such sentence be suspended, and if the accused is in confinement that he be released on bail or on his own bond.

**439.** In the case of any proceeding, the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of appeal by sections 195, 423, 426, 427, and 428, or on a Court by section 338, and may enhance the sentence, and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

**440.** No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision: Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, paragraph two.

**441.** When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order, and any facts which he thinks material to the issue; and the Court shall consider such statement before overruling or setting aside the said decision or order.

**442.** When a case is revised under this chapter by the High Court, it shall certify its decision or order to the Court by which the finding, sentence, or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

Act X.  
1882.

Chap.  
XXXIII.  
Ss. 443-47.

## PART VIII.

## SPECIAL PROCEEDINGS.

## CHAPTER XXXIII.

## CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

**443.** No Magistrate, unless he is a Justice of the Peace, and except in the case of a "District Magistrate or"<sup>1</sup> Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.

Magistrates who may inquire into and try charges against European British subjects.

**444.** No Judge presiding in a Court of Session "except the Sessions Judge"<sup>2</sup> shall exercise jurisdiction over an European British subject, unless he himself is an European British subject; and, if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

Sessions Judge to be an European British subject.

Assistant Sessions Judge to have held office for three years, and to be specially empowered.

**445.** Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person:

Cognizance of offence committed by European British subject.

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

**446.** Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a "District Magistrate, or"<sup>3</sup> Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees, or both; "and a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both."<sup>4</sup>

Sentences which may be passed by Provincial Magistrates

**447.** When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court.

When commitment is to be to Court of Session and when to High Court.

When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court.

<sup>1</sup> The words quoted have been inserted by Act III. of 1884, s. 3.

<sup>2</sup> The words quoted have been inserted by Act III. of 1884, s. 4.

<sup>3</sup> The words quoted have been inserted by Act III. of 1884, s. 5.

<sup>4</sup> The words quoted have been added by Act III. of 1884, s. 5.

448. Where any person committed to the High Court under section

Act X.  
1882.

Trial of offences of which one is, and the others are not, punishable with death or transportation for life.

447 is charged with several offences, of which one is punishable with death or transportation for life, and the others with a less punishment, and the High Court considers that he should not be tried

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Ss. 448-  
451A.

for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

449. Notwithstanding anything contained in section 31, no Court of

Sentences which may be passed by Court of Session.

Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

If, at any time after the commitment and before signing judgment,

Procedure when Sessions Judge finds his powers inadequate.

the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect, and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

450. [Repealed by Act III. of 1884, s. 6.]

451. (1) In trials of European British subjects before a High Court or

Jury or assessors before High Court or Court of Session.

Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be

tried by a mixed jury, the trial shall be by a jury, of which not less than half the number shall be Europeans or Americans, or both Europeans and Americans.

(2) When any such trial before a Court of Session would, in the ordinary course, be with the aid of assessors, the European British subject accused, or, where there are several European British subjects accused, all of them jointly, may, instead of claiming to be tried by a mixed jury under sub-section (1), require that not less than half the number of the assessors shall be Europeans or Americans, or both Europeans and Americans.<sup>1</sup>

451A. (1) In trials of European British subjects before a District

Right of European British subject to claim jury before District Magistrate.

Magistrate, any such subject may, in a summons-case before he is heard in his defence under section 244, or in a warrant-case before he enters on

his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 451.

(2) If a claim is made under sub-section (1) in a summons-case at the time when the Magistrate proceeds under section 244 to hear the accused, or in a warrant-case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

(3) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

(4) In every such case the Magistrate shall, notwithstanding anything contained in section 242, before issuing any orders as aforesaid, frame a formal charge.

<sup>1</sup> This section has been substituted by Act III. of 1884, s. 7, for the one originally enacted.

Act X.  
1882.

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452.

(5) the provisions of sections 211, 216, 217, 219, and 220, shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused, and the witnesses at every trial to be held under this section.

(6) The provisions of this Code relating to the procedure in a trial by jury before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge, and the accused had been committed to his Court for trial.

(7) All Courts may construe any of the provisions referred to in sub-section (5) or sub-section (6), in so far as they are made applicable by that sub-section, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

(8) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 447.<sup>1</sup>

**451B.** If an accused person claims to be tried by jury under section 451A, and in the opinion of the District Magistrate there is reason to believe that a jury composed in manner prescribed by section 451 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense, or inconvenience, which, under the circumstances of the case, would be unreasonable, he may, instead of issuing orders for the trial before himself under section 451A, transfer the case for trial to such other District Magistrate or to such Sessions Judge as the High Court may, from time to time, by rules made by it in this behalf, and approved by the Local Government, or by special order, direct.

(2) When a case is transferred under this section to a Sessions Judge or District Magistrate, he shall, with all convenient speed, try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under section 451A.<sup>1</sup>

**452.** In any case which an European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately :

Provided that, if the European British subject requires, under section 451, to be tried by a mixed jury, or by a mixed set of assessors, and the person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

**453.** When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial ; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate, and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

<sup>1</sup> Sections 451A and 451B have been inserted by Act III. of 1884, s. 8.

When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall, after such further inquiry (if any) as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court, and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

Act X.  
1882.

Chap.  
XXXIII.  
Ss. 454-59.

When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

454. If an European British subject does not claim to be dealt with as

Failure to plead status a such by the Magistrate before whom he is tried, waiver. or by whom he is committed, or if, when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject, and shall not assert it in any subsequent stage of the same case.

Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

455. Where a person who is not an European British subject is dealt

Trial under this chapter of person not an European British subject. with as such under this chapter, and does not object, the inquiry, commitment, trial, or sentence (as the case may be), shall not, by reason of such dealing, be invalid.

456. When any European British subject is unlawfully detained in

Right of European British subject unlawfully detained to apply for order to be brought before High Court. custody by any person, such European British subject or any person on his behalf may apply to the High Court which would have jurisdiction over such European British subject in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

457. The High Court, if it thinks fit, may, before issuing such order,

Procedure on such application. inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

458. The High Court may issue such orders throughout the territories

Territories throughout which High Court may issue such orders. within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor-General in Council may direct.

459. Unless there is something repugnant in the context, all enact-

Application of Acts conferring jurisdiction on Magistrates or Courts of Session. ments heretofore or hereafter made by the Governor-General in Council, which confer on Magistrates or on the Court of Session jurisdiction over offences shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.



Act X.  
1882.  
Chap.  
XXXIII.  
Ss. 460-63.

Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate "or any Judge presiding in a Court of Session"<sup>1</sup> not being a Justice of the Peace.<sup>2</sup>

**460.** In every case triable by jury or with the aid of assessors, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable, and if such European or American so claims, be Europeans or Americans.

**461.** Whenever an European or American is charged before the Court of Session jointly with a person not an European or American, and, in compliance with a claim made under section 460, is tried by a jury, or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

**462.** When a trial is to be held before the Court of Session, in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451 or section 460, "or before the Court of a District Magistrate or Sessions Judge proceeding under section 451A or 451B,"<sup>3</sup> the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

The Court shall also at the same time, in like manner, cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained:

Provided that in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

**463.** Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

<sup>1</sup> The words quoted have been inserted by Act III. of 1884, s. 9.

<sup>2</sup> Here 16 words, namely, "or in any Magistrate or Sessions Judge outside the Presidency-towns, not being an European British subject," have been repealed by Act III. of 1884, s. 9.

<sup>3</sup> The words quoted have been inserted by Act III. of 1884, s. 10.

## CHAPTER XXXIV.

## LUNATICS.

Act X.  
1882.Chap.  
XXXIV.  
Ss. 464-68.

**464.** When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind, and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the District or such other medical officer as the Local Government directs, and thereupon shall examine such surgeon or other officer as a witness, and shall reduce the examination to writing.

If such Magistrate is of opinion that the accused is of unsound mind, and consequently incapable of making his defence, he shall postpone further proceedings in the case.

**465.** If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind, and consequently incapable of making his defence, the jury or the Court with the aid of assessors shall, in the first instance, try the fact of such unsoundness and incapacity, and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

**466.** Whenever an accused person is found to be of unsound mind, and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, and for his appearance, when required, before the Magistrate or Court, or such officer as the Magistrate or Court appoints in this behalf.

If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, and the Local Government may order the accused to be confined in a lunatic asylum, or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

**467.** Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

**468.** If, when the accused appears or is again brought before the Magistrate or Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

Act X.  
1882.

Chap.  
XXXIV.  
Ss. 469-74.

**469.** When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

**470.** Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

**471.** Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

The Local Government may order such person to be confined in a lunatic asylum, jail, or other suitable place of safe custody.

**472.** When any person is confined under the provisions of section 466 or section 471, the Inspector-General of Prisons, if such person is confined in a jail, or the visitors of the lunatic asylum, or any two of them, if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector-General or by two of such visitors as aforesaid; and such Inspector-General or visitors shall make a special report to the Local Government as to the state of mind of such person.

**473.** If such person is confined under the provisions of section 466, and such Inspector-General or visitors shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector-General or visitors as aforesaid shall be receivable as evidence.

**474.** If such person is confined under the provisions of section 466 or section 471, and such Inspector-General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a commission, consisting of a judicial and two medical officers.

Such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

Act X.  
1882.

Chap.  
XXXV.  
Ss. 475-77.

**475.** Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of, and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

**475A.** The Governor-General in Council may direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail, or other place of safe custody, shall be removed from the place where he is confined to any lunatic asylum, jail, or other place of safe custody in British India.<sup>1</sup>

**475B.** The Local Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or section 471 to discharge all or any of the functions of the Inspector-General of Prisons under section 472, section 473, or section 474.<sup>1</sup>

## CHAPTER XXXV.

### PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

**476.** When any Civil, Criminal, or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

Such Magistrate shall thereupon proceed according to law, and may, if he is authorized under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.

**477.** Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195, and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge.

Power of Court of Session  
as to such offences committed  
before itself.

<sup>1</sup> These two sections have been inserted by Act X. of 1886, s. 12.

Act X.  
1882.

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

Chap.  
XXXV.  
Ss. 478-82.

**478.** When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

For the purposes of any inquiry under this section, the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and shall be deemed to have been held by a Magistrate.

**479.** When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate, or other Magistrate authorized to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

**480.** When any such offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code, is committed in the view or presence of any Civil, Criminal, or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence, and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

**481.** In every such case, the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

**482.** If the Court in any case considers that a person accused of any of the offences referred to in section 480, and committed in its view or presence, should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is, for any other reason, of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same,

and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

Act X.  
1882.

The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in the manner hereinbefore provided.

Chap.  
XXXV.  
Ss. 483-87.

**483.** When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

**484.** When any Court has, under section 480, adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender, or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

**485.** If any witness before a Criminal Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

**486.** Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the Sessions Division within which such Court is situate.

An appeal from such conviction by an officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or in the Presidency-towns, to the High Court.

**487.** Except as provided in sections 477, 480, and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon, and the Presidency Magistrates, shall try any person for any offence referred to in section 195, when

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

Act X.  
1882.

such offence is committed before himself, or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

Chap.  
XXXVI.  
Ss. 488-89.

Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.

## CHAPTER XXXVI.

### OF THE MAINTENANCE OF WIVES AND CHILDREN.

**488.** If any person, having sufficient means, neglects or refuses to main-

tain his wife or his legitimate or illegitimate child  
Order for maintenance of wives and children. unable to maintain itself, [the District Magistrate, a Presidency Magistrate,] a Sub-divisional Magistrate, or a Magistrate of the first class, may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

Such allowance shall be payable from the date of the order.

If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month :

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section, notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

On proof that any wife in whose favour an order has been made under this section is living in adultery, or that, without sufficient reason, she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

All evidence under this chapter shall be taken in the presence of the husband or father, as the case may be, or when his personal attendance is dispensed with, in the presence of his pleader, and shall be recored in the manner prescribed in the case of summons-cases.

**489.** On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit, provided the monthly rate of fifty rupees be not exceeded.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian (if any), or to the person to whom the allowance is to be paid; and such order shall be enforceable by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

Act X.  
1882.

Chaps.  
XXXVII.  
&  
XXXVIII.  
Ss. 490-92.

## CHAPTER XXXVII.

### DIRECTIONS OF THE NATURE OF A HABEAS CORPUS.

Power to issue directions of the nature of a *habeas corpus*.

491. Any of the High Courts of Judicature at Fort William, Madras, and Bombay, may, whenever it thinks fit, direct—

- (a) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law;
- (b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;
- (c) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending, or to be inquired into in such Court;
- (d) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor-General in Council for trial, or to be examined touching any matter pending before such Court-martial or Commissioners respectively;
- (e) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and
- (f) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section.

Nothing in this section applies to persons detained under Bengal Regulation III. of 1818, Madras Regulation II. of 1819, or Bombay Regulation XXV. of 1827, or the Acts of the Governor-General in Council No. XXXIV. of 1850 or No. III. of 1858.

## PART IX.

### SUPPLEMENTARY PROVISIONS.

## CHAPTER XXXVIII.

### OF THE PUBLIC PROSECUTOR.

492. The Governor-General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers, to be called Public Prosecutors.

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no



Act X. 1882. Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

Chap.  
XXXIX.  
Ss. 493-97.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial, or appeal; and, if any private person instructs a pleader any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Public Prosecutor may plead in all Courts in case under his charge.

to prosecute in any Court

Pleaders, privately instructed, to be under his direction.

494. Any Public Prosecutor appointed by the Governor-General in Council or the Local Government may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,

(a) if it is made before a charge has been framed, the accused shall be discharged;

(b) if it is made after a charge has been framed, or when, under this Code, no charge is required, he shall be acquitted.

495. Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor-General in Council;<sup>1</sup> but no person other than the Advocate-General, Standing Counsel, Government Solicitor, Public Prosecutor, or other officer generally or specially empowered by the Local Government in this behalf, shall be entitled to do so without such permission.

Any person conducting the prosecution may do so personally or by a pleader.

An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.<sup>1</sup>

## CHAPTER XXXIX.

### OF BAIL.

496. When any person, other than a person accused of a non-bailable offence, is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

497. When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if

<sup>1</sup> As amended by Act X. of 1886, s. 13.

there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

If it appears to such officer or Court at any stage of the investigation, inquiry, or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

**498.** The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

**499.** Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient, shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session, or other Court to answer the charge.

**500.** As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer, on receipt of the order, shall release him.

Nothing in this section, section 496, or section 497, shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

**501.** If, through mistake, fraud, or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it, and may order him to find sufficient sureties, and, on his failing so to do, may commit him to jail.

**502.** All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants:

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

Act X:  
1882.

Chap.  
XXXIX.  
Ss. 498-  
502.

Act X.  
1882.

## CHAPTER XL.

## OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

Ch. XL.  
Ss. 503-6.

**503.** Whenever, in the course of an inquiry, a trial, or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session, or the High Court, that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance, and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

When the witness resides in the dominions of any Prince or State in alliance with Her Majesty, in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is, or shall summon the witness before him, and shall take down his evidence in the same manner, and may, for this purpose, exercise the same powers, as in trials of warrant-cases under this Code.

**504.** If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

**505.** The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

Any such party may appear before such Magistrate or officer by pleader or, if not in custody, in person, and may examine, cross-examine, and re-examine (as the case may be) the said witness.

**506.** Whenever, in the course of an inquiry or a trial, or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense, or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided, or reject the application.

**507.** After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto, and the deposition, shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Act X.  
1882.Ch. XLI.  
Ss. 507-12.

**508.** In every case in which a commission is issued under section 503 or section 506, the inquiry, trial, or other proceeding, may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

## CHAPTER XLI.

### SPECIAL RULES OF EVIDENCE.

**509.** The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, may be given in evidence in any inquiry, trial, or other proceeding under this Code, although the deponent is not called as a witness.

Power to summon medical witness. The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

**510.** Any document purporting to be a report under the hand of any<sup>1</sup> Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial, or other proceeding under this Code.

**511.** In any inquiry, trial, or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—

(a) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

(b) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

**512.** If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence, or his

<sup>1</sup> The word "any" has been substituted by Act X. of 1886, s. 14, for the word "the."

Act X. 1882. attendance cannot be procured without an amount of delay, expense, or in convenience which, under the circumstances of the case, would be unreasonable.

Ch. XLII.  
Ss. 513-16.

## CHAPTER XLII.

## PROVISIONS AS TO BONDS.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

514. Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

If sufficient cause is not shown, and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person.

Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate "or Chief Presidency Magistrate"<sup>1</sup> within the local limits of whose jurisdiction such property is found.

If such penalty be not paid, and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

The Court may, at its discretion, remit any portion of the penalty mentioned, and enforce payment in part only.

515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

<sup>1</sup> The words quoted have been inserted by Act X. of 1886, s. 4.

## CHAPTER XLIII.

## OF THE DISPOSAL OF PROPERTY.

Act X.  
1882.Ch. XLIII.  
Ss. 517-21.

**517.** When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

When a High Court or a Court of Session makes such order, and cannot, through its own officers, conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is livestock, or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

**EXPLANATION.**—In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

**518.** In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate, or to a Sub-divisional Magistrate, who shall, in such cases, deal with it as if it had been seized by the police, and the seizure had been reported to him in the manner hereinafter mentioned.

**519.** When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has, on his arrest, been taken out of the possession of the convicted person, the Court may, on the application of such purchaser, and on the restitution of the stolen property to the person entitled to the possession thereof, order that, out of such money, a sum not exceeding the price paid by such purchaser be delivered to him.

**520.** Any Court of appeal, confirmation, reference, or revision, may direct any order under section 517, section 518, or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court; and may modify, alter, or annul such order.

**521.** On a conviction under the Indian Penal Code, section 292, section 293, section 501, or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court, or remain in the possession or power of the person convicted.

Act X.  
1882.

Ch. XLIV.  
Ss. 522-26.

The Court may in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274, or section 275, order the food, drink, drug, or medical preparation in respect of which the conviction was had, to be destroyed.

**522.** Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, by such Power to restore possession of immovable property. force, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.

No such order shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

**523.** The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen, or Procedure by police upon seizure of property taken under section 51 or stolen. found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if Procedure where owner of property seized unknown. any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation, specifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

**524.** If no person, within such period, establishes his claim to such property, and if the person in whose possession such Procedure where no claimant appears within six months. property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate, or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

**525.** If the person entitled to the possession of such property is unknown or absent, and the property is subject to Power to sell perishable property. speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

## CHAPTER XLIV.

### OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case, or itself try it.

**526.** Whenever it is made to appear to the High Court—

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or  
(c) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

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(d) that an order under this section will tend to the general convenience of the parties or witnesses, "or

Chap.  
XLIV.  
Ss. 526A,  
527.

(e) that such an order is expedient for the ends of justice,"<sup>1</sup>  
it may order—

(1) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction; or

(3) that any particular criminal case or appeal be transferred to and tried before itself; "or

(4) that an accused person be committed for trial to itself or to a Court of Session."<sup>1</sup>

When the Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate-General, be supported by affidavit or affirmation.

When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Nothing in this section shall be deemed to affect any order made under section 197:

526A. If, in any criminal case or appeal, before the commencement of the hearing, the public prosecutor, the complainant, or the accused, notifies to the Court before which the case or appeal is pending his intention to make an application under section 526 in respect of the case, the Court shall exercise the powers of postponement or adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made, and an order being obtained thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal.<sup>2</sup>

527. The Governor-General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal

Power of Governor-General in Council to transfer criminal cases and appeals.

<sup>1</sup> The words quoted have been inserted by Act III. of 1884, s. 11.

<sup>2</sup> This section has been inserted by Act III. of 1884, s. 12.



Act X. 1882. or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

Ch. XLV. Ss. 528-30. The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

**528.** Any District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

The Local Government may authorize the District Magistrate to withdraw from the Magistrates subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

A Magistrate making an order under this section shall record in writing his reason for making the same.<sup>1</sup>

## CHAPTER XLV.

### OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings.

**529.** If any Magistrate not empowered by law to do any of the following things, namely:—

- (a) to issue a search-warrant under section 98 ;
- (b) to order, under section 155, the police to investigate an offence ;
- (c) to hold an inquest under section 176 ;
- (d) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits ;
- (e) to take cognizance of an offence under section 191, clause (a) or clause (b) ;
- (f) to transfer a case under section 192 ;
- (g) to tender a pardon under section 337 or section 338 ;
- (h) to sell property under section 524 or section 525 ; or
- (i) to withdraw a case and try it himself under section 528 ;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings.

**530.** If any Magistrate, not being empowered by law in this behalf, does any of the following things (namely):—

- (a) attaches and sells property under section 88 ;
- (b) issues a search-warrant for a letter in the post-office, or a telegram in the Telegraph Department ;
- (c) demands security to keep the peace ;
- (d) demands security for good behaviour ;
- (e) discharges a person lawfully bound to be of good behaviour ;
- (f) cancels a bond to keep the peace ;
- (g) makes an order under section 133 as to a local nuisance ;
- (h) prohibits under section 143 the repetition or continuance of a public nuisance ;

<sup>1</sup> This clause has been inserted by Act III. of 1884, s. 13.

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Ss. 531-36.

- (i) issues an order under section 144 ;
- (j) makes an order under Chapter XII. ;
- (k) takes cognizance, under section 191, clause (c), of an offence ;
- (l) passes a sentence, under section 349, on proceedings recorded by another Magistrate ;
- (m) calls, under section 435, for proceedings ;
- (n) makes an order for maintenance ;
- (o) revises, under section 515, an order passed under section 514 ;
- (p) tries an offender ;
- (q) tries an offender summarily ; or
- (r) decides an appeal ; his proceedings shall be void.

**531.** No finding, sentence, or order of any Criminal Court, shall be set aside merely on the ground that the inquiry, trial, or other proceeding in the course of which it was arrived at or passed took place in a wrong Sessions Division, District, Sub-division, or other local area, unless it appears that such error occasioned a failure of justice.

**532.** If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless, during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

**533.** If any Court before which a confession or other statement of an accused person recorded under section 164 or section 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded ; and, notwithstanding anything contained in the Indian Evidence Act, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

**534.** An omission to ask a person whether he is an European British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceeding.

**535.** No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless in the opinion of the Court of appeal or revision a failure of justice has been occasioned thereby.

If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be re-commenced from the point immediately after the framing of the charge.

**536.** If an offence triable with the aid of assessors is tried by a jury, the trial shall not, on that ground only, be invalid.

Trial by jury of offence triable with assessors.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not, on that ground only, be invalid, unless the objection is taken before the Court records its finding.

Trial with assessors of offence triable by jury.

**537.** Subject to the provisions hereinbefore contained, no finding, sentence, or order passed by a Court of competent jurisdiction, shall be reversed or altered under Chapter XXVII. or on appeal or revision on account—

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

of any error, omission, or irregularity in the complaint, summons, warrant, charge, judgment, or other proceeding before or during trial, or in any inquiry or other proceeding under this Code, or

of the want of any sanction required by section 195, or

of the omission to revise any list of jurors or assessors in accordance with section 324, or

of any misdirection in any charge to a jury; unless such error, omission, irregularity, want, or misdirection, has occasioned a failure of justice.

**538.** No distress made under this Code shall be deemed unlawful, nor

Distress not illegal, nor distrainer a trespasser, for defect or want of form in proceedings.

shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress, or other proceeding relating thereto.

## CHAPTER XLVI.

### MISCELLANEOUS.

**539.** Affidavits and affirmations to be used before any High Court or

Courts and persons before whom affidavits may be sworn.

any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

**540.** Any Court may, at any stage of any inquiry, trial, or other proceeding under this Code, summon any person as a

Power to summon material witness, or examine person present.

witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine, or recall and re-examine, any such person, if his evidence appears to it essential to the just decision of the case.

**541.** Unless when otherwise provided by any law for the time being in

Power to appoint place of imprisonment.

force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

**541A.** (1) If any person liable to be imprisoned or committed to cus-

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

tody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(2) When a person is removed to a criminal jail under sub-section (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure; or

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(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure.<sup>1</sup>

Chap.  
XLVI.  
Ss. 542-48.

**542.** Notwithstanding anything contained in the Prisoners' Testimony Act, 1869, any Presidency Magistrate desirous of

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

examining as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may

issue an order to the officer in charge of the said jail, requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

**543.** When the services of an interpreter are required by any Criminal

Interpreter to be bound to interpret truthfully.

Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation

of such evidence or statement.

**544.** Subject to any rules made by the Local Government with the pre-

Expenses of complainants and witnesses.

vious sanction of the Governor-General in Council, any Criminal Court may order payment, on the part

of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial, or other proceeding before such Court under this Code.

**545.** Whenever, under any law in force for the time being, a Criminal

Power of Court to pay expenses or compensation out of fine.

Court imposes a fine, or confirms, in appeal, revision, or otherwise, a sentence of fine, or a sentence

of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying expenses properly incurred in the prosecution;

(b) in compensation for the injury caused by the offence committed where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

**546.** At the time of awarding compensation in any subsequent civil suit

Payments to be taken into account in subsequent suit.

relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

**547.** Any money (other than a fine) payable by virtue of any order made

Moneys ordered to be paid recoverable as fines.

under this Code shall be recoverable as if it were a fine.

**548.** If any person affected by a judgment or order passed by a Criminal

Copies of proceedings.

Court desires to have a copy of the Judge's charge to the jury, or of any order or deposition or other

<sup>1</sup> This section has been inserted by Act X. of 1886, s. 15.

Act X.  
1882.

Chap.  
XLVI.  
Ss. 549-53.

part of the record, he shall, on applying for such copy, be furnished therewith :  
Provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

**549.** The Governor-General in Council may make rules, consistent with this Code and the Army Act, 1881, or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies or by Court-martial ; and when any person is brought before a Magistrate, and charged with an offence for which he is liable, under the Army Act, 1881, section 41, to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall, in proper cases, deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps, or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being tried by Court-martial.

Every Magistrate shall, on receiving a written application for that purpose by the commanding officer of any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

**550.** Police-officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

**551.** Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian, or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

**552.** Whenever any person causes a police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

In such case, if more persons than one are arrested or complained against, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term, not exceeding thirty days, as the Magistrate directs, unless such sum is sooner paid.

**553.** With the previous sanction of the Governor-General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of Subordinate Courts.

Power of other High Courts to make rules for other purposes.

Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,

Act X.  
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(a) make rules for keeping all books, entries, and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts ;

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Ss. 554-59.

(b) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided ;

(c) make rules for regulating its own practice and proceedings, and the practice and proceedings of all Criminal Courts subordinate to it ; and

(d) make rules for regulating the execution of warrants issued under this Code for the levy of fines :

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the local official Gazette.

**554.** Subject to the power conferred by section 553, and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

**555.** No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

*Explanation.*—A Judge or Magistrate shall not be deemed to be a party, or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.

**556.** The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts established by Royal Charter.

Powers of Governor-General in Council and Local Government exercisable from time to time.

**557.** All powers conferred by this Code on the Governor-General in Council or on the Local Government may be exercised, from time to time, as occasion requires.

**558.** The provisions of this Code shall apply, so far as may be, to all cases pending in any Criminal Court when this Code comes into force.

Officers concerned in sales not to purchase or bid for property.

**559.** A public servant having any duty to perform in connection with the sale of any property under this Code shall not purchase or bid for the property.<sup>1</sup>

<sup>1</sup> New section, added by Act X. of 1886, s. 16.

## SCHEDULE I.

## ENACTMENTS REPEALED.

*(a.)—Statute.*

Year, reign, and chapter.	TITLE.	Extent of repeal.
13 Geo. III. chapter 63	An Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe.	Section 38.

*(b.)—Acts of the Governor-General in Council.*

Number and year.	SUBJECT.	Extent of repeal.
XXIII. of 1840 ...	Execution of process... ..	So much as has not been repealed.
XLV. of 1860 ...	Penal Code ... ..	The illustrations to section 214.
V. of 1861 ...	Police Act ... ..	Section 6 and the last nine words of section 24. Section 35, down to and including the words "Provided that."
XVIII. of 1862 ...	Criminal Procedure, Supreme Courts.	So much as has not been repealed.
VI. of 1864 ...	Whipping ... ..	Section 7.
II. of 1869 ...	Justices of the Peace ...	So much as has not been repealed.
XXII. of 1870 ...	Application to European British subjects of Acts conferring summary jurisdiction.	So much as has not been repealed.

## SCHEDULE I.—(continued).

## ENACTMENTS REPEALED—(continued).

(b.)—Acts of the Governor-General in Council—(continued).

Number and year.	SUBJECT.	Extent of repeal.
IV. of 1872 ...	Panjab Laws ... ..	So far as it relates to Bengal Regulation XX. of 1825.
X. of 1872 ...	The Code of Criminal Procedure.	So much as has not been repealed.
XI. of 1874 ...	Amending the Code of Criminal Procedure.	The whole.
XV. of 1874 ...	Laws Local Extent ... ..	So far as it relates to Bengal Regulation XX. of 1825.
X. of 1875 ...	High Courts' Criminal Procedure.	The whole Act, except section 144 and so much of section 146 as relates to informations.
XX. of 1875 ...	Central Provinces Laws ...	So far as it relates to Bengal Regulation XX. of 1825.
XVIII. of 1876 ...	Oudh Laws ... ..	Ditto.
IV. of 1877 ...	Presidency Magistrates ...	The whole Act, except section 57.
XXI. of 1879 ...	Extradition ... ..	Chapter III.
X. of 1881 ...	Coroners ... ..	Sections 8 and 9.



## SCHEDULE I.—(concluded).

## ENACTMENTS REPEALED—(concluded).

## (c.)—Regulations.

Number and year.	SUBJECT.	Extent of repeal.
Bengal Regulation XX of 1825.	Jurisdiction of Courts Martial	So much as has not been repealed.
III. of 1872 ...	Santhal Parganas Settlement...	So far as it relates to Act X. of 1872.
IX. of 1874 ...	Arakan Hills District Laws ...	So far as it relates to Acts II. of 1869, X. of 1872, and XI. of 1874.
III. of 1877 ...	Ajmer Laws ... ..	So far as it relates to Bengal Regulation XX. of 1825.

## (d.)—Act of the Governor of Fort St. George in Council.

Number and year.	SUBJECT.	Extent of repeal.
VIII. of 1867 ...	Police ... ..	Section 9.

## SCHEDULE II.

### TABULAR STATEMENT OF OFFENCES.

**EXPLANATORY NOTE.**—The entries in the second and seventh columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code," are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

The third column of this schedule applies to the police in the towns of Calcutta and Bombay.

### Chapter V.—Abetment. 109-120

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.

## Chapter V.—Abetment—(continued).

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bail-able or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
111	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.

114	Abetment of any offence, if abettor is present when offence is committed.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto	...	Ditto	...	Not bailable	...	Ditto	...	Ditto.
✓	If an act which causes harm be done in consequence of the abetment.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.	Ditto	...	Ditto	...	According as the offence abetted is bailable or not.	...	Ditto	...	Ditto.
✓	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
117	Abetting the commission of an offence by the public, or by more than ten persons.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto	...	Ditto	...	Not bailable	...	Ditto	...	Ditto.
✓	If the offence be not committed...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.

## Chapter V.—Abetment—(concluded).

1	2	3	4	5	6	7	8
SECTION.	O F F E N C E .	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the offence be committed.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence abetted is triable.
	If the offence be punishable with death or transportation for life.	Ditto	Ditto	Not bailable	Ditto	Imprisonment of either description for 10 years.	Ditto.
	If the offence be not committed...	Ditto	Ditto	According as the offence abetted is bailable or not.	Ditto	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
	If the offence be not committed...	Ditto	...	Ditto	...	Ditto	...	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	...	Ditto.

## Chapter VI.—Offences against the State. 121-130

	Shall not arrest without warrant.	Warrant	Not bailable	Not comm-poundable.	Death, or transportation for life, and forfeiture of property.	Court of Session.
121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	...	...	...	...	...
121A	Conspiring to commit certain offences against the State.	Ditto	...	Ditto	Transportation for life or any shorter term, or imprisonment of either description for ten years.	Ditto.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Ditto	...	Ditto	Transportation for life or imprisonment of either description for ten years, and forfeiture of property.	Ditto.
123	Concealing with intent to facilitate a design to wage war.	Ditto	...	Ditto	Imprisonment of either description for ten years and fine.	Ditto.
124	Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Ditto	...	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.

## Chapter VI.—Offences against the State—(continued).

1	2	3	4	5	6	7	8
	O F F E N C E .	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bail-able or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
SECTION.							
124A	Exciting, or attempting to excite, disaffection.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine.	Court of Session.
125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.

129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto	...	Ditto	...	Bailable	...	Ditto	...	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto	...	Ditto	...	Not bailable	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

## Chapter VII.—Offences relating to the Army and Navy. 131-145

131	Abetting mutiny, or attempting to seduce an officer, soldier, or sailor from his allegiance or duty.	May arrest without warrant.	...	Warrant	...	Not bailable	...	Not compoundable.	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Death, or transportation for life, or imprisonment for 10 years, and fine.	Ditto.
133	Abetment of an assault by an officer, soldier, or sailor on his superior officer, when in the execution of his office.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.



## Chapter VII.—Offences relating to the Army and Navy—(concluded).

1	2	3	4	5	6	7	8
	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bail-able or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
135	Abetment of the desertion of an officer, soldier, or sailor.	May arrest without warrant.	Warrant ...	Bailable ...	Not com-poundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
136	Harbouring such an officer, soldier, or sailor who has deserted.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
137	Deserter concealed on board merchant-vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons ...	Ditto	Ditto	Ditto	Ditto.
138	Abetment of act of insubordination by an officer, soldier, or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant ...	Ditto	Ditto	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto	Summons ...	Ditto	Ditto	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

## Chapter VIII.—Offences against the Public Tranquillity.

143	Being member of an unlawful assembly.	May arrest without warrant.	Summons ...	Bailable ...	Not punishable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
147	Rioting ... ..	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
148	Rioting, armed with a deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	Ditto ...	The same as for the offence	The Court by which the offence is triable.
150	Hiring, engaging, or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged, or employed.	Ditto ...	Ditto ...	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.

## Chapter VIII.—Offences against the Public Tranquillity—(continued).

1	2	3	4	5	6	7	8
	O F F E N C E.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
SECTION.							
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, &c.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed. If not committed ... ..	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both. Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate. Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Fine of 1,000 rupees.	Presidency Magistrate or Magistrate of the first or second class.

## Chapter IX.—Offences by, or relating to, Public Servants.

155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Ditto	...	Ditto	...	Ditto	...	Fine...	...	Ditto.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
158	Being hired to take part in an unlawful assembly or riot.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
	Or to go armed	Ditto	...	Warrant	...	Ditto	...	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
160	Committing affray	Shall not arrest without warrant.	Summons	...	Ditto	...	Ditto	...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.

Chapter IX.—Offences by, or relating to, Public Servants.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons	...	Bailable	...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
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## Chapter IX.—Offences by, or relating to, Public Servants—(continued).

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
162	Taking a gratification in order, by corrupt or illegal means, to influence a public servant. ...	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 year, or fine, or both.	Ditto.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.
170	Personating a public servant	May arrest without warrant.	...	Warrant	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto	...	Summons	...	Ditto	...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

## Chapter X.—Contempts of the Lawful Authority of Public Servants.

1	2	3	4	5	6	7	8
SECTION.	O F F E N C E .	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
172	Abducting to avoid service of summons or other proceeding from a public servant. If summons or notice require attendance in person, &c., in a Court of Justice.	Shall not arrest without warrant. Ditto	Summons ... Ditto	Bailable ... Ditto	Not compoundable. Ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both. Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Any Magistrate. Ditto.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto	Ditto	Ditto	Ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class. Ditto.
174	If summons, &c., require attendance in person, &c., in a Court of Justice. Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority. If the order require personal attendance, &c., in a Court of Justice.	Ditto Ditto Ditto	Ditto Ditto Ditto	Ditto Ditto Ditto	Ditto Ditto Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both. Simple imprisonment for 1 month, or fine of 500 rupees, or both. Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Any Magistrate. Ditto.

175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto	...	Ditto	...	Ditto	...	Ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV.; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
		Ditto	...	Ditto	...	Ditto	...	Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
176	If the document is required to be produced in or delivered to a Court of Justice.	Ditto	...	Ditto	...	Ditto	...	Ditto	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto	...	Ditto	...	Ditto	...	Ditto	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
	If the notice or information required respects the commission of an offence, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto	Ditto.
177	Knowingly furnishing false information to a public servant.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto	Ditto.
	If the information required respects the commission of an offence, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto.



## Chapter X.—Contempts of the Lawful Authority of Public Servants—(continued).

1	2	3	4	5	6	7	8
		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
SECTION.							
178	Refusing oath when duly required to take oath by a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class. Ditto.
179	Being legally bound to state truth, and refusing to answer questions.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.

181	Knowingly stating to a public servant on oath as true that which is false.	Ditto	...	Warrant ...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto	...	Summons ...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto	...	Ditto	Ditto	...	Ditto	...	Ditto	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto	...	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto	...	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto	...	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.
187	Omission to assist public servant when bound by law to give such assistance.	Ditto	...	Ditto	Ditto	...	Ditto	...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	Willfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto	...	Ditto	Ditto	...	Ditto	...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.

## Chapter-X.—Contempts of the Lawful Authority of Public Servants—(concluded).

1	2.	3	4	5	6	7	8
	O F F E N C E .	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
SECTION							
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance, or injury to persons lawfully employed.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If such disobedience causes danger to human life, health, or safety, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	
189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

## Chapter XI.—False Evidence and Offences against Public Justice.

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
194	Giving or fabricating false evidence in any other case.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 3 years and fine.	Ditto.
	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto	Ditto	Not bailable	Ditto	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
195	If innocent person be thereby convicted and executed.	Ditto	Ditto	Ditto	Ditto	Death, or as above ...	Ditto.
	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards.	Ditto	Ditto	Ditto	Ditto	The same as for the offence	Ditto.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto	Ditto	According as the offence of giving such evidence is bailable or not.	Ditto	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

## Chapter XI.—False Evidence and Offences against Public Justice—(continued).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	The same as for giving false evidence.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
198	Using as a true certificate one known to be false in a material point.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
199	False statement made in any declaration which is by law receivable as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.

202	If punishable with transportation for life or imprisonment for ten years.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If punishable with less than 10 years' imprisonment.	Ditto	...	Ditto	...	Ditto	...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
	Intentional omission to give information of an offence by a person legally bound to inform.	Ditto	...	Summons	...	Ditto	...	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	Ditto	...	Warrant	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto	...	Ditto	...	Ditto	...	...	Presidency Magistrate or Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

## Chapter XI.—False Evidence and Offences against Public Justice—(continued).

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
206	OFFENCE. Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture or in satisfaction of a fine under sentence, or in execution of a decree.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second-class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	Ditto	Ditto	Ditto	Ditto	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering a decree to be executed after it has been satisfied.	Ditto	Ditto	Ditto	Ditto	Ditto	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of Justice...	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 2 years and fine.	Ditto.

210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
211	False charge of offence made with intent to injure.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
	If offence charged be punishable with imprisonment for 7 years.*	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If offence charged be capital, or punishable with transportation for life, or with imprisonment for a term exceeding 7 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	Court of Session.
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Ditto.
	If punishable with imprisonment for one year, and not for 10 years.	Ditto	...	Ditto	...	Ditto	...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate, or Magistrate of the first class, or Court by which the offence is triable.

\* This item has been added by Act X. of 1886, s. 17.



## Chapter XI.—False Evidence and Offences against Public Justice—(continued).

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
213	<p>Taking gift, &amp;c., to screen an offender from punishment, if the offence be capital.</p> <p>If punishable with transportation for life, or with imprisonment for 10 years.</p> <p>If with imprisonment for less than 10 years.</p>	<p>Shall not arrest without warrant.</p> <p>Ditto ...</p>	<p>Warrant ...</p> <p>Ditto ...</p>	<p>Bailable ...</p> <p>Ditto ...</p>	<p>Not compoundable.</p> <p>Ditto ...</p> <p>Ditto ...</p>	<p>Imprisonment of either description for 7 years and fine.</p> <p>Imprisonment of either description for 3 years and fine.</p> <p>Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.</p>	<p>Court of Session.</p> <p>Court of Session, Presidency Magistrate, or Magistrate of the first class.</p> <p>Presidency Magistrate, or Magistrate of the first class, or Court by which the offence is triable.</p>

214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital. If punishable with transportation for life, or with imprisonment for 10 years.	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 7 years and fine.	Court of Session.
		Ditto	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
215	Taking gift to help to recover movable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
	If harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
216	If punishable with transportation for life or with imprisonment for 10 years.	Ditto	...	Ditto	...	Ditto	...	...	Imprisonment of either description for 3 years, with or without fine.	Ditto.

## Chapter XI.—False Evidence and Offences against Public Justice—(continued).

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	O F F E N C E.						
	If with imprisonment for 1 year, and not for 10 years.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.

219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict, or decision, which he knows to be contrary to law.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital. If punishable with transportation for life, or imprisonment for 10 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
			...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death. If under sentence of transportation or penal servitude for life, or transportation, imprisonment, or penal servitude for 10 years or upwards.	Ditto	...	Ditto	...	Not bailable	...	Ditto	...	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
		Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, with or without fine.	Ditto.

## Chapter XI.—False Evidence and Offences against Public Justice—(continued).

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If under sentence of imprisonment for less than 10 years, or lawfully committed to custody.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
223	Escape from confinement negligently suffered by a public servant.	Ditto ...	Summons...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ...	Ditto	Ditto	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	Ditto ...	Ditto	Ditto	Ditto	Ditto ...	Ditto.

If charged with an offence punishable with transportation for life, or imprisonment for ten years.	Ditto	...	Ditto	...	Not bailable	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
If charged with a capital offence...	Ditto	...	Ditto	...	Ditto	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.
If the person is sentenced to transportation for life, or to transportation, penal servitude, or imprisonment for 10 years or upwards.	Ditto	...	Ditto	...	Ditto	Ditto	...	Ditto	Ditto.
If under sentence of death ...	Ditto	...	Ditto	...	Ditto	Ditto	...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
225A* Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for—	Shall not arrest without warrant.	...	Ditto	...	Bailable	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
(a) in case of intentional omission or sufferance;	...	...	Summons	...	Ditto	Ditto	...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
(b) in case of negligent omission or sufferance.	Ditto	...	Summons	...	Ditto	Ditto	...		

\* Items 225A and 225B have been substituted by Act X. of 1886, s. 18, for the one originally enacted, that is, 225A.

## Chapter XI.—False Evidence and Offences against Public Justice—(concluded).

I	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
225B*	Resistance or obstruction to lawful apprehension, or escape or rescue, in cases not otherwise provided for.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
226	Unlawful return from transportation.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life and fine, and rigorous imprisonment for 3 years before transportation.	Court of Session.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.

\* Items 225A and 225B have been substituted by Act X. of 1886, s. 18, for the one originally enacted, that is, 225A.

228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto	...	Ditto	...	Bailable	...	Ditto	...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV.
229	Personation of ajuror or assessor.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	President Magistrate or Magistrate of the first class.

## Chapter XII.—Offences relating to Coin and Government Stamps.

231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	...	Warrant	...	Not bailable	...	Not compoundable.	...	Imprisonment of either description for 7 years and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
233	Making, buying, or selling instrument for the purpose of counterfeiting coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.



## Chapter XII.—Offences relating to Coin and Government Stamps—(continued).

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether punishable or not.	Punishment under the Indian Penal Code.	By what Court triable.
234	Making, buying, or selling instrument for the purpose of counterfeiting the Queen's coin.	May arrest without warrant.	Warrant ...	Not bailable	Not punishable.	Imprisonment of either description for 7 years and fine.	Court of Session.
235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
236	If Queen's coin ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
	Abetting in British India the counterfeiting out of British India of coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.

237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
238	Import or export of counterfeits of the Queen's coin, knowing the same to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Transportation for life or imprisonment of either description for 10 years and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
240	The same with respect to the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both.	Presidency Magistrate or Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

## Chapter XII.—Offences relating to Coin and Government Stamps—(continued).

1	2	3	4	5	6	7	8
	O F F E N C E .	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
SECTION:							
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Court of Session.
245	Unlawfully taking from a Mint any coining instrument.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

247.	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
248	Altering appearance of any coin, with intent that it shall pass as a coin of a different description.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Ditto.
249	Altering appearance of the Queen's coin, with intent that it shall pass as a coin of a different description.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Ditto.
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Ditto.
245	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or second class.

## Chapter XII.—Offences relating to Coin and Government Stamps—(concluded).

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bail-able or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
255	Counterfeiting a Government stamp	May arrest without warrant.	Warrant ...	Bailable ...	Not com-poundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Ses-sion.
256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either de-scription for 7 years and fine.	Ditto.
257	Making, buying, or selling instru-ment for the purpose of counterfeiting a Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
258	Sale of counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Court of Ses-sion, Presi-dency Ma-gistrate, or Magistrate of the first class.

260.	Using as genuine a Government stamp known to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government stamp known to have been before used.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
263	Erasure of mark denoting that stamp has been used.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

## Chapter XIII.—Offences relating to Weights and Measures.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not comm-pounable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
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## Chapter XIII.—Offences relating to Weights and Measures—(concluded).

1	2	3	4	5	6	7	8
	O F F E N C E .	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
265	Fraudulent use of false weight or measure.	Shall not arrest without warrant.	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

## Chapter XIV.—Offences affecting the Public Health, Safety, Convenience, Decency, and Morals.

	May arrest without warrant...	Summons...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.					

270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
273	Selling any food or drink as food and drink knowing the same to be noxious.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.



## Chapter XIV.—Offences Affecting the Public Health, Safety, Convenience, Decency, and Morals—(continued).

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
278	Making atmosphere noxious to health.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Presidency Magistrate or Magistrate of the first or second class.
281	Exhibition of a false light, mark, or buoy.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Sessions.

282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life.	Ditto	...	Summons ...	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
283	Causing danger, obstruction, or injury in any public way or line of navigation.	Ditto	...	Ditto	Ditto	...	Ditto	...	Fine of 200 rupees	Ditto.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	...	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	...	Ditto	Ditto	...	Ditto	...	Ditto	Any Magistrate.
286	So dealing with any explosive substance.	Ditto	...	Ditto	Ditto	...	Ditto	...	Ditto	Ditto.
287	So dealing with any machinery ...	Shall not arrest without warrant.	...	Ditto	Ditto	...	Ditto	...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life the fall of any building over which he has right entitling him to pull it down or repair it.	Ditto	...	Ditto	Ditto	...	Ditto	...	Ditto	Ditto.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant.	...	Ditto	Ditto	...	Ditto	...	Ditto	Any Magistrate.
290	Committing a public nuisance ...	Shall not arrest without warrant.	...	Ditto	Ditto	...	Ditto	...	Fine of 200 rupees	Ditto.

## Chapter XIV.—Offences affecting the Public Health, Safety, Convenience, Decency, and Morals—(continued).

1	2	3	4	5	6	7	8
	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
SECTION.							
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
292	Sale, &c., of obscene books, &c....	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine, or both.	Ditto.
293	Having in possession obscene books, &c., for sale or exhibition.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
294	Obscene songs ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
294A	Keeping a lottery-office ...	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to letteries.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine of 1,000 rupees ...	Ditto.

## Chapter XV.—Offences Relating to Religion.

	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.					
296	Causing a disturbance to an assembly engaged in religious worship.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.
297	Trespassing in place of worship or sepulchre, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
298	Uttering any word or making any sound in the hearing, or making any gesture or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ...	Compoundable.	Ditto ...	Ditto.

## Chapter XVI.—Offences affecting the Human Body.

*Of Offences affecting Life.*

	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Death, or transportation for life, and fine.	Court of Session.
302	Murder ... ..					
303	Murder by a person under sentence of transportation for life.	Ditto ...	Ditto ...	Ditto ...	Death ... ..	Ditto.

Chapter XVI.—Offences affecting the Human Body—(continued).  
Of Offences affecting Life—(continued).

1	2	3	4	5	6	7	8
	O F F E N C E .	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
SECTION.							
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.  If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	May arrest without warrant.  Ditto ...	Warrant ...  Ditto ...	Not bailable  Ditto ...	Not compoundable.  Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.  Imprisonment of either description for 10 years, or fine, or both.	Court of Session.  Ditto.
304A	Causing death by rash or negligent act.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated,	Ditto ...	Ditto ...	Not bailable	Ditto	Death, or transportation for life, or imprisonment for 10 years, and fine.	Court of Session.

306	Abetting the commission of suicide.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either de- scription for 10 years and fine.	Ditto.
307	Attempt to murder	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
	If such act cause hurt to any person.	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or as above.	Ditto.
308	Attempt by life-convict to murder, if hurt is caused.	Ditto	...	Ditto	...	Ditto	...	Death, or as above	Ditto.
	Attempt to commit culpable homi- cide.	Ditto	...	Ditto	...	Bailable	...	Imprisonment of either de- scription for 3 years, or fine, or both.	Ditto.
	If such act cause hurt to any person.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either de- scription for 7 years, or fine, or both.	Ditto.
309	Attempt to commit suicide	Ditto	...	Ditto	...	Ditto	...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magis- trate of the first or se- cond class. Court of Ses- sion.
311	Being a thug	Ditto	...	Ditto	...	Not bailable	...	Transportation for life and fine.	

*Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.*

312	Causing miscarriage	...	...	Warrant	...	Bailable	...	Not com- poundable.	Imprisonment of either de- scription for 3 years, or fine, or both.	Court of Ses- sion.
	If the woman be quick with child	...	...	Shall not ar- rest with- out warrant	...	Ditto	...	Ditto	Imprisonment of either de- scription for 7 years and fine.	Ditto.

**Chapter XVI.—Offences Affecting the Human Body—(continued).**  
*Of the Causing of Miscarriage ; of Injuries to Unborn Children ; of the Exposure of Infants ;*  
*and of the Concealment of Births—(continued).*

1	2	3	4	5	6	7	8
		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	O F F E N C E .						
SECTION.							
313	Causing miscarriage without woman's consent.	Shall not arrest without warrant. Ditto	Warrant ... Ditto	Not bailable Ditto	Not compoundable. Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
314	Death caused by an act done with intent to cause miscarriage.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
315	If act done without woman's consent.	Ditto	Ditto	Ditto	Ditto	Transportation for life, or as above.	Ditto.
316	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
317	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
	Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Ditto	Bailable ...	Ditto	Imprisonment of either description for 7 years and fine, or both.	Ditto.

318	Concealment of birth by secret disposal of dead body.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
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*Of Hurt.*

323	Voluntarily causing hurt	...	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	...	May arrest without warrant.	Ditto	Ditto	Compoundable when permission is given by the Court before which a prosecution is pending. Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt	Ditto	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto	Ditto	Ditto	Not bailable	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.



Chapter XVI.—Offences affecting the Human Body—(continued).  
Of Hurt—(continued).

1	2	3	4	5	6	7	8
	O F F E N C E .	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
SECTION.							
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
328	Administering stupefying drug with intent to cause hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

332	Voluntarily causing hurt to deter public servant from his duty.	Ditto	...	Ditto	...	Bailable	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto	...	Ditto	...	Not bailable.	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant.	...	Summons	...	Bailable	...	Compoundable.	...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant.	...	Ditto	...	Ditto	...	Compoundable when permission is given by the Court before which a prosecution is pending.	...	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
336	Doing any act which endangers human life or the personal safety of others.	Ditto	...	Ditto	...	Ditto	...	Not compoundable.	...	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c.	Ditto	...	Ditto	...	Ditto	...	Compoundable when permission is given by the Court before which a prosecution is pending.	...	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human life, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Ditto.

Chapter XVI.—Offences affecting the Human Body—(continued).  
Of Wrongful Restraint and Wrongful Confinement.

1	2	3	4	5	6	7	8
	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
SECTION.							
341	Wrongfully restraining any person.	May arrest without warrant. Ditto ...	Summons ... Ditto ...	Bailable ... Ditto ...	Compoundable. Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both. Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate. Presidency Magistrate, or Magistrate of the first or second class.
342	Wrongfully confining any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Ditto.
343	Wrongfully confining for three or more days.	Ditto ...	Ditto ...	Ditto ...	Not compoundable. Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
344	Wrongfully confining for ten or more days.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.

345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto.
346	Wrongful confinement in secret...	May arrest without warrant.	Ditto	...	Ditto	...	Ditto	Ditto.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto	Ditto	...	Ditto	...	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first class.

*Of Criminal Force and Assault.*

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons	...	Bailable	...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant	...	Ditto	...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

Chapter XVI.—Offences affecting the Human Body—(continued).  
Of Criminal Force and Assault—(continued).

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate, or Magistrate of the first or second class. Ditto.
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Compoundable.	Ditto ...	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Ditto ...	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

*Of Kidnapping, Abduction, Slavery, and Forced Labour.*

	Kidnapping	...	...	...	May arrest without warrant.	Warrant ...	Not bailable.	Not com- poundable.	Imprisonment of either de- scription for 7 years and fine.	Court of Ses- sion, Presi- dency Ma- gistrate, or Magistrate of the first class.
363	Kidnapping	...	...	...	Ditto	Ditto	Ditto	...	...	Court of Ses- sion.
364	Kidnapping or abducting in order to murder.	...	...	...	Ditto	Ditto	Ditto	...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Ses- sion.
365	Kidnapping or abducting with in- tent secretly and wrongfully to confine a person.	...	...	...	Ditto	Ditto	Ditto	...	Imprisonment of either de- scription for 7 years and fine.	Ditto.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	...	...	...	Ditto	Ditto	Ditto	...	Imprisonment of either de- scription for 10 years and fine.	Ditto.
367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	...	...	...	Ditto	Ditto	Ditto	...	Ditto	Ditto.
368	Concealing or keeping in confine- ment a kidnapped person.	...	...	...	Ditto	Ditto	Ditto	...	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	...	...	...	Ditto	Ditto	Ditto	...	Imprisonment of either de- scription for 7 years and fine.	Ditto.

Chapter XVI.—Offences affecting the Human Body—(concluded).  
*Of Kidnapping, Abduction, Slavery, and Forced Labour—(concluded).*

1	2	3	4	5	6	7	8
	O F F E N C E .	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
SECTION.							
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
371	Habitual dealing in slaves ...	May arrest without warrant.	Ditto ...	Notbailable.	Ditto ...	Transportation for life or imprisonment of either description for 10 years and fine.	Ditto.
372	Selling or letting to hire a minor for purposes of prostitution, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
373	Buying or obtaining possession of a minor for the same purposes.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
374	Unlawful compulsory labour ...	Ditto ...	Ditto ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.

*Of Rape.*

376	Rape	...	...	...	...	May arrest without warrant.	Warrant ...	Not bailable.	Not punishable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
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*Of Unnatural Offences.*

377	Unnatural offences	...	...	...	...	May arrest without warrant.	Warrant ...	Not bailable.	Not punishable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
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## Chapter XVII.—Offences against Property.

*Of Theft.*

379	Theft	...	...	...	...	May arrest without warrant.	Warrant ...	Not bailable.	Not punishable.	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent, or vessel.	...	...	...	...	Ditto	Ditto	Ditto	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
381	Theft by clerk or servant of property in possession of master or employer.	...	...	...	...	Ditto	Ditto	Ditto	Ditto	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt, or of restraint in order to the committing of such theft or to retiring after committing it, or to retaining property taken by it.	...	...	...	...	Ditto	Ditto	Ditto	Ditto	Rigorous imprisonment for 10 years and fine.	Court of Session.



Chapter XVII.—Offences against Property—(continued).  
Of Extortion.

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
384	Extortion ... ..	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

389	If the offence threatened be an unnatural offence. Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion. If the offence be an unnatural of fence.	Ditto	...	Ditto	...	Ditto	...	Transportation for life	...	Ditto.
		Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	...	Ditto.
		Ditto	...	Ditto	...	Ditto	...	Transportation for life	...	Ditto.

*Of Robbery and Dacoity.*

392	Robbery ... ..	May arrest without warrant.	Warrant	...	Not bailable.	...	Not compoundable.	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
393	If committed on the highway between sunset and sunrise. Attempt to commit robbery ...	Ditto	Ditto	...	Ditto	...	Ditto	Rigorous imprisonment for 14 years and fine.	Ditto.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	Ditto	Ditto	...	Ditto	...	Ditto	Rigorous imprisonment for 7 years and fine.	Ditto.
395	Dacoity ... ..	Ditto	Ditto	...	Ditto	...	Ditto	Transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
396	Murder in dacoity ... ..	Ditto	Ditto	...	Ditto	...	Ditto	Ditto	Court of Session.
397	Robbery or dacoity, with attempt to cause death or grievous hurt.	Ditto	Ditto	...	Ditto	...	Ditto	Death, transportation for life, or rigorous imprisonment for 10 years and fine.	Ditto.
		Ditto	Ditto	...	Ditto	...	Ditto	Rigorous imprisonment for not less than 7 years.	Ditto.

Chapter XVII.—Offences against Property—(continued).  
Of Robbery and Dacoity—(concluded).

1	2	3	4	5	6	7	8
	O F F E N C E .	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
SECTION.							
398	Attempt to commit robbery or dacoity when armed with deadly weapon.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Rigorous imprisonment for not less than 7 years.	Court of Session.
399	Making preparation to commit dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Ditto.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

Of Criminal Misappropriation of Property.

403	Dishonest misappropriation of moveable property, or converting it to one's own use,	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
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404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
	If by clerk or person employed by deceased.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.

*Of Criminal Breach of Trust.*

406	Criminal breach of trust	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto	Ditto	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
408	Criminal breach of trust by a clerk or servant.	Ditto	Ditto	Ditto	...	Ditto	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.

Chapter XVII.—Offences against Property—(continued).  
*Of Criminal Breach of Trust—(concluded).*

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
409	Criminal breach of trust by public servant, or by banker, merchant, or agent, &c.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

*Of the Receiving of Stolen Property.*

	Shall not arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
411	Dishonestly receiving stolen property, knowing it to be stolen.	...	...	...	...	Court of Session.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.

413	Habitually dealing in stolen property.	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.

*Of Cheating.*

417	Cheating	...	...	...	...	Warrant	...	Bailable	...	Not com- poundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
418	Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	...	...	...	...	Ditto	...	Ditto	...	Ditto	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
419 420	Cheating by personation inducing delivery of property, or the making, alteration, or destruction of a valuable security.	...	...	...	...	Ditto Ditto	...	Ditto Ditto	...	Ditto Ditto	Ditto Imprisonment of either description for 7 years and fine.	Ditto. Court of Session, Presidency Magistrate, or Magistrate of the first class.

Chapter XVII.—Offences against Property—(continued).  
Of Fraudulent Deeds and Dispositions of Property.

1	2	3	4	5	6	7	8
	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
SECTION.							
421	Fraudulent removal or concealment of property, &c., to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
424	Fraudulent removal or concealment of property of himself or any other person or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

*Of Mischief.*

	Mischief ... ..	...	...	...	Shall not arrest without warrant.	Summons...	Bailable ...	Compoundable when the only loss or damage caused is loss or damage to a private person.	Imprisonment of either description for 3 months, or fine, or both.	Any Magistrate.
426	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	...	...	...	Ditto	Warrant ...	Ditto	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate, or Magistrate of the first or second class.
427	Mischief by killing, poisoning, maiming, or rendering useless any animal of the value of 10 rupees or upwards.	...	...	...	May arrest without warrant.	Ditto	Ditto	Not compoundable.	Ditto ...	Ditto.
428	Mischief by killing, poisoning, maiming, or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	...	...	...	Ditto	Ditto	Ditto	Ditto ...	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
429	Mischief by causing diminution of supply of water for agricultural purposes, &c.	...	...	...	Ditto.	Ditto	Ditto	Ditto ...	Ditto ...	Ditto.



Chapter XVII.—Offences against Property—(continued).  
Of Mischief—(continued).

1	2	3	4	5	6	7	8
SECTION.	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
431	Mischief by injury to public road, bridge, navigable river, or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
433	Mischief by destroying or moving or rendering less useful a light-house or seamark, or by exhibiting false lights.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
434	Mischief by destroying or moving, &c., a landmark fixed by public authority.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards, or, in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant.	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Court of Session.
435								
436	Mischief by fire or explosive substance with intent to destroy a house, &c.	Ditto	...	...	Not bailable.	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto	...	...	Ditto	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto	...	...	Ditto	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto	...	...	Ditto	Ditto	Imprisonment of either description for 10 years and fine.	Ditto.
440	Mischief committed after preparation made for causing death, or hurt, &c.	Ditto	...	...	Ditto	Ditto	Imprisonment of either description for 5 years and fine.	Ditto.

*Of Criminal Trespass.*

	Criminal trespass	...	...	Summons	Bailable	...	Compoundable.	Any Magistrate.
447								
448	House-trespass	...	...	Warrant	Ditto	...	Ditto	Ditto.

Chapter XVII.—Offences against Property—(continued).  
Of Criminal Trespass—(continued).

1	2	3	4	5	6	7	8
	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
SECTION.							
449	House-trespass in order to the commission of an offence punishable with death.	May arrest without warrant. Ditto ...	Warrant ... Ditto ...	Not bailable. Ditto ...	Not compoundable. Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine. Imprisonment of either description for 10 years and fine.	Court of Session. Ditto.
450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Any Magistrate.
451	House-trespass in order to the commission of an offence punishable with imprisonment. If the offence is theft	Ditto ... ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class. Ditto.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...

453	Lurking house trespass or house-breaking.	Ditto	...	Ditto	...	...	Imprisonment of either description for 2 years and fine.	President or Magistrate of the first or second class.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto	...	Ditto	...	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
455	If the offence is theft	Ditto	...	Ditto	...	...	Imprisonment of either description for 10 years and fine.	Ditto.
	Lurking house-trespass or house-breaking after preparation made for causing hurt, assault, &c.	Ditto	...	Ditto	...	...	...	Court of Session, Presidency Magistrate, or Magistrate of the first class.
456	Lurking house-trespass or house-breaking by night.	Ditto	...	Ditto	...	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment. If the offence is theft.	Ditto	...	Ditto	...	...	Imprisonment of either description for 5 years and fine.	Ditto.
		Ditto	...	Ditto	...	...	Imprisonment of either description for 14 years and fine.	Ditto.

Chapter XVII.—Offences against Property—(concluded).  
Of Criminal Trespass—(concluded).

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 14 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Count of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class,

462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
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## Chapter XVIII.—Offences relating to Documents and to Trade or Property-marks.

465	Forgery	...	...	...	Warrant	...	Bailable	...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.
466	Forgery of a record of a Court of Justice or of a register of births, &c., kept by a public servant.	Ditto	...	...	Ditto	...	Not bailable.	...	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
467	Forgery of a valuable security, will, or authority to make or transmit for any valuable security, or to receive any money, &c. When the valuable security is a promissory note of the Government of India.	Ditto	...	...	Ditto	...	Ditto	...	Ditto	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
468	Forgery for the purpose of cheating.	May arrest without warrant.	...	...	Ditto	...	Ditto	...	Ditto	Ditto	Ditto.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Shall not arrest without warrant	...	...	Ditto	...	Ditto	...	Ditto	Imprisonment of either description for 7 years and fine.	Ditto.
471	Using as genuine a forged document which is known to be forged.	Ditto	...	...	Ditto	...	Bailable	...	Ditto	Imprisonment of either description for 3 years and fine.	Ditto.
		Ditto	...	...	Ditto	...	Ditto	...	Ditto	Punishment for forgery	Ditto.

## Chapter XVIII.—Offences relating to Document and to Trade or Property-marks—(continued).

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bail able or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
		May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Punishment for forgery ...	Court of Session.
472	When the forged document is a promissory note of the Government of India. Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possession with like intent any such seal, plate, &c., knowing the same to be counterfeited.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years and fine.	Ditto.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possession with like intent any such seal, plate, &c., knowing the same to be counterfeited.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 7 years and fine.	...	Ditto.
475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	...	Ditto.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 7 years and fine.	...	Ditto.
<i>Of Trade and Property-marks.</i>														
482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.							



Chapter XVIII.—Offences relating to Documents and to Trade or Property-marks—(concluded).  
*Of Trade and Property-marks—(concluded).*

1	2	3	4	5	6	7	8
	O F F E N C E .	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bail-able or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
SECTION.							
483	Counterfeiting a trade or property-mark used by another with intent to cause damage or injury.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property trade-mark.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.

486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
487	Fraudulently making a false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first or second class.
488	Making use of any such false mark.	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
489	Removing, destroying, or defacing any property-mark with intent to cause injury.	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

## Chapter XIX.—Criminal Breach of Contracts of Service.

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
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## Chapter XIX.—Criminal Breach of Contracts of Service—(concluded).

1	2	3	4	5	6	7	8
	O F F E N C E .	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind, or disease, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of double the expense incurred, or both.	Ditto.

## Chapter XX.—Offences relating to Marriage.

	Shall not arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.					

494	Marrying again during the lifetime of a husband or wife.	Ditto	...	Ditto	...	Bailable	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto	...	Ditto	...	Not bailable.	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
497	Adultery ... ..	Ditto	...	Ditto	...	Bailable	...	Compoundable.	...	Imprisonment of either description for 5 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

## Chapter XXI.—Defamation.

500	Defamation	...	...	...	...	Warrant	...	Bailable	...	Compoundable.	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.
501	Printing or engraving matter knowing it to be defamatory.	Ditto	...	...	...	Ditto	...	Ditto	...	Ditto	...	Ditto.

Chapter XXI.—Defamation—(concluded).

1	2	3	4	5	6	7	8
SECTION.		Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable.	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate, or Magistrate of the first class.

Chapter XXII.—Criminal Intimidation, Insult, and Annoyance.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
505	False statement, rumour, &c., circulated with intent to cause mutiny or offence against the public peace.	Ditto ...	Ditto ...	Not bailable.	Not compoundable.	Ditto ...	Presidency Magistrate or Magistrate of the first or second class.

506	Criminal intimidation ...	Ditto	...	Ditto	...	Bailable ...	Compoundable.	Ditto	...	Ditto.
	If threat be to cause death or grievous hurt, &c.	Ditto	...	Ditto	...	Ditto	Not compoundable.	Imprisonment of either description for 7 years, or fine, or both.	...	Court of Session, Presidency Magistrate, or Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto	...	Ditto	...	Ditto	Ditto	Imprisonment of either description for 2 years, in addition to the punishment under above section.	...	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of divine displeasure.	Ditto	...	Ditto	...	Ditto	Ditto	Imprisonment of either description for 1 year, or fine, or both.	...	Presidency Magistrate, or Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman, &c.	Ditto	...	Ditto	...	Ditto	Ditto	Simple imprisonment for 1 year, or fine, or both.	...	Presidency Magistrate or Magistrate of the first class.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto	...	Ditto	...	Ditto	Ditto	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	...	Any Magistrate.

Chapter XXIII.—Attempts to commit Offences.

1	2	3	4	5	6	7	8
	OFFENCE.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bail-able or not.	Whether com-poundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordi-narily issue.	According as the offence contemplated by the offender is bailable or not.	Compound-able when the offence attempted is com-poundable.	Transportation or imprison-ment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence at-tempted is triable.

Offences against other Laws.

	May arrest without warrant.	Warrant ...	Not bailable.	Not com-poundable.	.....
If punishable with death, trans-portion, or imprisonment for seven years or upwards.					

If punishable with imprisonment for three years and upwards, but less than seven.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	.....
If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons...	Bailable	...	Ditto	...	Ditto	...	.....
If punishable with fine only	Ditto	...	Ditto	...	Ditto	...	Ditto	...	.....

According to the provisions of section 29 of this Code.



## SCHEDULE III.

## ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

*I.—Ordinary Powers of a Magistrate of the Third Class.*

- (1) Power to arrest, or direct the arrest in his presence of an offender, section 65.
- (2) Power to endorse a warrant, or to order the removal of an accused person, arrested under a warrant, sections 83, 84, and 86.
- (3) Power to issue proclamations in cases judicially before him, section 87.
- (4) Power to attach and sell property in cases judicially before him, section 88.
- (5) Power to restore attached property, section 89.
- (6) Power to issue search-warrant, section 96.
- (7) Power to endorse a search-warrant and order delivery of thing found, section 99.
- (8) Power to record statements or confessions during a police-investigation, section 164.
- (9) Power to authorize detention of a person during a police-investigation, section 167.
- (10) Power to detain an offender found in Court, section 351.
- (11) Power to sell perishable property of a suspected character, section 525.

*II.—Ordinary Powers of a Magistrate of the Second Class.*

- (1) The ordinary powers of a Magistrate of the third class.
- (2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

*III.—Ordinary Powers of a Magistrate of the First Class.*

- (1) The ordinary powers of a Magistrate of the second class.
- (2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.
- (3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
- (4) Power to require security to keep the peace, section 107.
- (5) Power to require security for good behaviour, section 109.
- (6) Power to make orders, &c., in possession-cases, sections 145, 146, and 147.
- (7) Power to commit for trial, section 206.
- (8) Power to stop proceedings when no complainant, section 249.
- (9) Power to make orders of maintenance, sections 488 and 489.

*IV.—Ordinary Powers of a Sub-divisional Magistrate.*

- (1) The ordinary powers of a Magistrate of the first class.
- (2) Power to direct warrants to landholders, section 78.
- (2A) Power to require security for good behaviour, section 110.<sup>a</sup>
- (3) Power to make orders as to local nuisances, section 133.
- (4) Power to make orders prohibiting repetitions of nuisances, section 143.
- (5) Power to make orders under section 144.
- (6) Power to hold inquests, section 174.
- (7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction 186.
- (8) Power to entertain complaints, section 191.
- (9) Power to receive police-reports, section 191.
- (10) Power to entertain cases without complaint, section 191.
- (11) Power to transfer cases to a Subordinate Magistrate, section 192.
- (12) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
- (13) Power to sell property alleged or suspected to have been stolen, &c., section 524.
- (14) Power to withdraw cases other than appeals, and to try or refer them for trial, section 528.

*V.—Ordinary Powers of a District Magistrate.*

- (1) The ordinary powers of a Sub-divisional Magistrate, being a Magistrate of the first class.
- (2) Power to issue search-warrants for documents in custody of Postal or Telegraph authorities, section 96.
- (3) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.
- (4) Power to cancel bond for keeping the peace, section 125.
- (5) Power to try summarily, section 260.
- (6) Power to quash convictions in certain cases, section 350.
- (7) Power to hear appeals from orders requiring security for good behaviour, section 406.
- (8) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
- (9) Power to call for records, section 435.
- (10) Power to revise orders passed under section 514, section 515.

SCHEDULE IV.

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY  
BE INVESTED.

<p>POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED.</p>	<p>BY THE LOCAL GOVERNMENT</p>	<ol style="list-style-type: none"> <li>(1) Power to require security for good behaviour, section 110 :</li> <li>(2) Power to make orders as to local nuisances, section 133 :</li> <li>(3) Power to make orders prohibiting repetitions of nuisances, section 143 :</li> <li>(4) Power to make orders under section 144 :</li> <li>(5) Power to hold inquests, section 174 :</li> <li>(6) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186 :</li> <li>(7) Power to take cognizance of offences upon complaint, section 191 :</li> <li>(8) Power to take cognizance of offences upon police-reports, section 191 :</li> <li>(9) Power to take cognizance of offences upon information, section 191 :</li> <li>(10) Power to try summarily, section 260 :</li> <li>(11) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407 :</li> <li>(12) Power to sell property alleged or suspected to have been stolen, &amp;c., section 524.</li> </ol>
	<p>BY THE DISTRICT MAGISTRATE</p>	<ol style="list-style-type: none"> <li>(1) Power to make orders prohibiting repetitions of nuisances, section 143 :</li> <li>(2) Power to make orders under section 144 :</li> <li>(3) Power to hold inquests, section 174 :</li> <li>(4) Power to take cognizance of offences upon complaint, section 191 :</li> <li>(5) Power to take cognizance of offences upon police-reports, section 191 :</li> <li>(6) Power to transfer cases, section 192.</li> </ol>

## SCHEDULE IV —(concluded).

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE  
INVESTED—(concluded).

POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED	By THE LOCAL GOVERNMENT	<ul style="list-style-type: none"> <li>(1) Power to pass sentences of whipping, section 32 :</li> <li>(2) Power to make orders prohibiting repetitions of nuisances, section 143 :</li> <li>(3) Power to make orders under section 144 :</li> <li>(4) Power to hold inquests, section 174 :</li> <li>(5) Power to take cognizance of offences upon complaint, section 191 :</li> <li>(6) Power to take cognizance of offences upon police-reports, section 191 :</li> <li>(7) Power to take cognizance of offences upon information, section 191 :</li> <li>(8) Power to commit for trial, section 206.</li> </ul>
POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	By THE DISTRICT MAGISTRATE	<ul style="list-style-type: none"> <li>(1) Power to make orders prohibiting repetitions of nuisances, section 143 :</li> <li>(2) Power to make orders under section 144 :</li> <li>(3) Power to hold inquests, section 174 :</li> <li>(4) Power to take cognizance of offences upon complaint, section 191 :</li> <li>(5) Power to take cognizance of offences upon police-reports, section 191.</li> </ul>
POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	By THE LOCAL GOVERNMENT	<ul style="list-style-type: none"> <li>(1) Power to make orders prohibiting repetitions of nuisances, section 143 :</li> <li>(2) Power to make orders under section 144 :</li> <li>(3) Power to hold inquests, section 174 :</li> <li>(4) Power to take cognizance of offences upon complaint, section 191 :</li> <li>(5) Power to take cognizance of offences upon police-reports, section 191 :</li> <li>(6) Power to commit for trial, section 206.</li> </ul>
POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	By THE DISTRICT MAGISTRATE	<ul style="list-style-type: none"> <li>(1) Power to make orders prohibiting repetitions of nuisances, section 143 :</li> <li>(2) Power to make orders under section 144 :</li> <li>(3) Power to hold inquests, section 174 :</li> <li>(4) Power to take cognizance of offences upon complaint, section 191 :</li> <li>(5) Power to take cognizance of offences upon police-reports, section 191.</li> </ul>
POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED	By THE LOCAL GOVERNMENT	<ul style="list-style-type: none"> <li>Power to call for records, section 435.</li> </ul>

## SCHEDULE V.

## FORMS.

## I.—SUMMONS TO AN ACCUSED PERSON.

(See section 68.)

To \_\_\_\_\_ of \_\_\_\_\_  
 WHEREAS your attendance is necessary to answer to a charge of [state shortly  
*the offence charged*], you are hereby required to appear in person [or by pleader, as  
*the case may be*], before the [Magistrate] of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_.  
 Herein fail not.  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
 [Seal.] \_\_\_\_\_ [Signature.]

## II.—WARRANT OF ARREST.

(See section 75.)

To [name and designation of the person or persons who is or are to execute the  
*warrant*.  
 WHEREAS \_\_\_\_\_ of \_\_\_\_\_ stands charged with the offence of [state the offence],  
 you are hereby directed to arrest the said \_\_\_\_\_, and to produce him before me.  
 Herein fail not.  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
 [Seal.] \_\_\_\_\_ [Signature.]

(See section 76.)

*This warrant may be endorsed as follows :—*  
 If the said \_\_\_\_\_ shall give bail himself in the sum of \_\_\_\_\_, with one surety in  
 the sum of \_\_\_\_\_ [or two sureties each in the sum of \_\_\_\_\_], to attend before me  
 on the \_\_\_\_\_ day of \_\_\_\_\_, and to continue so to attend until otherwise directed by  
 me, he may be released.  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
 \_\_\_\_\_ Signature.

## III.—BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(See section 86.)

I [name], of \_\_\_\_\_, being brought before the District Magistrate of \_\_\_\_\_ [or as  
*the case may be*] under a warrant issued to compel my appearance to answer to the  
 charge of \_\_\_\_\_, do hereby bind myself to attend in the Court of \_\_\_\_\_ on the \_\_\_\_\_  
 day of \_\_\_\_\_ next to answer to the said charge, and to continue so to attend  
 until otherwise directed by the Court; and, in case of my making default herein, I  
 bind myself to forfeit to Her Majesty the Queen-Empress of India, the sum of \_\_\_\_\_  
 rupees.  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
 \_\_\_\_\_ [Signature.]

I do hereby declare myself surety for the abovenamed \_\_\_\_\_ of \_\_\_\_\_, that he  
 shall attend before \_\_\_\_\_ in the Court of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ next to answer  
 to the charge on which he has been arrested, and shall continue so to attend until  
 otherwise directed by the Court; and, in case of my making default herein, I here-  
 by bind myself to forfeit to Her Majesty the Queen-Empress of India the sum of \_\_\_\_\_  
 rupees.  
 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.  
 \_\_\_\_\_ Signature.]

## SCHEDULE V.—(continued).

## FORMS—(continued).

## IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(See section 87.)

WHEREAS complaint has been made before me that [name, description, and address] has committed [or is suspected to have committed] the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said [name] cannot be found; and whereas it has been shown to my satisfaction that the said [name] has absconded [or is concealing himself to avoid the service of the said warrant];

Proclamation is hereby made that the said of is required to appear at [place] before this Court [or before me] to answer the said complaint within 30 days from this date.

Dated this day of , 18 .

[Seal.]

[Signature.]

## V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(See section 87.)

WHEREAS complaint has been made before me that [name, description, and address] has committed [or is suspected to have committed] the offence of mention the offence concisely, and a warrant has been issued to compel the attendance of [name, description, and address of the witness] before this Court to be examined, touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said [name of witness] cannot be served, and it has been shown to my satisfaction that he has absconded [or is concealing himself to avoid the service of the said warrant];

Proclamation is hereby made that the said [name] is required to appear at [place] before the Court of on the day of next at o'clock, to be examined touching , the offence complained of.

Dated this day of , 18 .

[Seal.]

[Signature.]

## VI.—ORDER OF ATTACHMENT TO COMPEL THE ATTENDANCE OF A WITNESS.

(See section 88.)

To the Police-officer in charge of the police-station at

WHEREAS a warrant has been duly issued to compel the attendance of [name, description, and address] to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded [or is concealing himself to avoid the service of the said warrant]; and thereupon a proclamation was duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein, and he has failed to appear;

This is to authorize and require you to attach by seizure the moveable property belonging to the said to the value of rupees , which you may find within the District of , and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

[Seal.]

[Signature.]

## SCHEDULE V.—(continued).

## FORMS—(continued).

ORDER OF ATTACHMENT TO COMPEL THE APPEARANCE  
OF A PERSON ACCUSED.

(See section 88.)

To [name and designation of the person or persons who is or are to execute the warrant].

WHEREAS complaint has been made before me that [name, description, and address] has committed [or is suspected to have committed] the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said [name] cannot be found; and whereas it has been shown to my satisfaction that the said [name] has absconded [or is concealing himself to avoid the service of the said warrant]; and thereupon a proclamation was duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village [or town] of , in the District of , viz., , and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

[Seal.]

[Signature.]

ORDER AUTHORIZING AN ATTACHMENT BY THE DEPUTY  
COMMISSIONER AS COLLECTOR.

(See section 88.)

To the Deputy-Commissioner of the District of

WHEREAS complaint has been made before me that [name, description, and address] has committed [or is suspected to have committed] the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said [name] cannot be found; and whereas it has been shown to my satisfaction that the said [name] has absconded [or is concealing himself to avoid the service of the said warrant], and thereupon a proclamation was duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared; and whereas the said is possessed of certain land paying revenue to Government in the village [or town] of in the District of ;

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of , 18 .

[Seal.]

[Signature.]

## VII.—WARRANT IN THE FIRST INSTANCE TO BRING UP A WITNESS.

(See section 90.)

To [name and designation of the Police-officer or other person or persons who is or are to execute the warrant.]

WHEREAS complaint has been made before me that of has [or is suspected to have] committed the offence of [mention the offence concisely], and it appears likely that [name and description of witness] can give evidence concerning

## SCHEDULE V.—(continued).

## FORMS—(continued).

the said complaint ; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so ;

This is to authorize and require you to arrest the said [name], and on the day of \_\_\_\_\_ to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_, 18 .  
[Seal.] [Signature.]

## VIII.—WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE.

(See section 96.)

To [name and designation of the Police-officer or other person or persons who is or are to execute the warrant].

WHEREAS information has been laid [or complaint has been made] before me of the commission [or suspected commission] of the offence of [mention the offence concisely], and it has been made to appear to me that the production of [specify the thing clearly] is essential to the inquiry now being made [or about to be made] into the offence [or suspected offence] ;

This is to authorize and require you to search for the said [the thing specified] in the [describe the house or place or part thereof to which the search is to be confined], and, if found, to produce the same forthwith before this Court ; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court this \_\_\_\_\_ day of \_\_\_\_\_, 18 .  
[Seal.] [Signature.]

## IX.—WARRANT TO SEARCH SUSPECTED PLACE OF DEPOSIT.

(See section 98.)

To [name and designation of a Police-officer above the rank of a Constable].

WHEREAS information has been laid before me, and, on due inquiry thereupon had, I have been led to believe that the house [describe the house or other place] is used as a place for the deposit [or sale] of stolen property [or, if for either of the other purposes expressed in the section, state the purpose in the words of the section] ;

This is to authorize and require you to enter the said house [or other place] with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house [or other place, or, if the search is to be confined to a part, specify the part clearly], and to seize and take possession of any property [or documents, or stamps, or seals, or coins, as the case may be]—Add (when the case requires it) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false seals, or counterfeit coin (as the case may be), and forthwith to bring before this Court such of the said things as may be taken possession of ; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 .  
[Seal.] [Signature.]

## SCHEDULE V.—(continued).

## FORMS—(continued).

## X.—BOND TO KEEP THE PEACE.

(See section 106.)

WHEREAS I [name], inhabitant of [place], have been called upon to enter into a bond to keep the peace for the term of \_\_\_\_\_, I hereby bind myself not to commit a breach of the peace or do any act that may probably occasion a breach of the peace during the said term; and, in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

[Signature.]

## XI.—BOND FOR GOOD BEHAVIOUR.

(See sections 109 and 110.)

WHEREAS I [name], inhabitant of [place], have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects for the term of [state the period], I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term; and, in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

[Signature.]

[Where a bond with sureties is to be executed, add]—We do hereby declare ourselves sureties for the abovenamed \_\_\_\_\_ that he will be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of rupees \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

To \_\_\_\_\_ of \_\_\_\_\_.

[Signature.]

## XII.—SUMMONS ON INFORMATION OF A PROBABLE BREACH OF THE PEACE.

(See section 114.)

To \_\_\_\_\_ of \_\_\_\_\_

WHEREAS it has been made to appear to me by credible information that [state the substance of the information], and that you are likely to commit a breach of the peace [or by which not a breach of the peace will probably be occasioned], you are hereby required to attend in person [or by a duly authorized agent] at the office of the Magistrate of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_, at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees \_\_\_\_\_ [when sureties are required, add and also to give security by the bond of one (or two, as the case may be) surety (or sureties) in the sum of rupees (each, if more than one)] that you will keep the peace for the term of \_\_\_\_\_.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

[Seal.]

[Signature.]



## SCHEDULE V.—(continued).

## FORMS—(continued).

XIII.—WARRANT OF COMMITMENT ON FAILURE TO FIND  
SECURITY TO KEEP THE PEACE.

(See section 123.)

To the Superintendent [or Keeper] of the Jail at

WHEREAS [name and address] appeared before me in person [or by his authorized agent] on the      day of      in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees      , with one surety [or a bond with two sureties each in rupees      ], that he the said [name] would keep the peace for the period of      months; and whereas an order was then made requiring the said [name] to enter into and find such security [state the security ordered when it differs from that mentioned in the summons], and he has failed to comply with the said order;

This is to authorize and require you the said Superintendent [or Keeper] to receive the said [name] into your custody together with this warrant, and him safely to keep in the said jail for the said period of [term of imprisonment], unless he shall in the meantime comply with the said order by himself and his surety [or sureties] entering into the said bond, in which case the same shall be received, and the said [name] released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this      day of      , 18 .

[Seal.]

[Signature.]

XIV.—WARRANT OF COMMITMENT ON FAILURE TO FIND  
SECURITY FOR GOOD BEHAVIOUR.

(See section 123.)

To the Superintendent [or Keeper] of the Jail at

WHEREAS it has been made to appear to me that [name and description] has been and is lurking within the District of      having no ostensible means of subsistence [or, and that he is unable to give any satisfactory account of himself];

or

WHEREAS evidence of the general character of [name and description] has been adduced before me, and recorded, from which it appears that he is an habitual robber [or house-breaker, &c., as the case may be];

And whereas an order has been recorded, stating the same, and requiring the said [name] to furnish security for his good behaviour for the term of [state the period] by entering into a bond with one surety [or two or more sureties, as the case may be], himself for rupees      , and the said surety [or each of the said sureties] for rupees      , and the said [name] has failed to comply with the said order, and for such default has been adjudged imprisonment for [state the term] unless the said security be sooner furnished;

This is to authorize and require you the said Superintendent [or Keeper] to receive the said [name] into your custody, together with this warrant, and him safely to keep in the said jail for the said period of [term of imprisonment], unless he shall in the meantime comply with the said order by himself and his surety [or sureties] entering into the said bond, in which case the same shall be received, and the said [name] released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this      day of      , 18 .

[Seal.]

[Signature.]

## SCHEDULE V.—(continued).

## FORMS—(continued).

## XV.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(See sections 123 and 124.)

To the Superintendent [or Keeper] of the Jail at [or other officer in whose custody the person is].

WHEREAS [name and description of prisoner] was committed to your custody under warrant of this Court, dated the      day of      , and has since duly given security under section      of the Code of Criminal Procedure,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community ;

This is to authorize and require you forthwith to discharge the said [name] from your custody, unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court, this      day of      , 18      .

[Seal.]

[Signature.]

## XVI.—ORDER FOR THE REMOVAL OF NUISANCES.

(See section 133.)

To [name, description, and address].

WHEREAS it has been made to appear to me that you have caused an obstruction [or nuisance] to persons using the public roadway [or other public place], which, &c. [describe the road or public place], by, &c. [state what it is that causes the obstruction or nuisance], and that such obstruction [or nuisance] still exists ;

or

WHEREAS it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of [state the particular trade or occupation, and the place where it is carried on], and that the same is injurious to the public health [or comfort] by reason [state briefly in what manner the injurious effects are caused], and should be suppressed or removed to a different place ;

or

WHEREAS it has been made to appear to me that you are the owner [or are in possession of, or have the control over] a certain tank [or well or excavation] adjacent to the public way [describe the thoroughfare], and that the safety of the public is endangered by reason of the said tank [or well or excavation] being without a fence [or insecurely fenced] ;

or

WHEREAS, &c., &c. [as the case may be] ;

I do hereby direct and require you within [state the time allowed] to [state what is required to be done to abate the nuisance], or to appear at      in the Court of      on the      day of      next, and to show cause why this order should not be enforced ;

or

I do hereby direct and require you within [state the time allowed] to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, &c. ;

or

I do hereby direct and require you, within [state the time allowed], to put a sufficient fence [state the kind of fence and the part to be fenced], or to appear, &c. ;

or

I do hereby direct and require you, &c., &c. [as the case may be].

Given under my hand and the seal of the Court, this      day of      , 18      .

[Seal.]

[Signature.]

## SCHEDULE V.—(continued).

FORMS—(continued).

## XVII.—MAGISTRATE'S ORDER CONSTITUTING A JURY.

(See section 138.)

WHEREAS on the      day of      , 18      , an order was issued to [name], requiring him [state the effect of the order], and whereas the said [name] has applied to me by a petition, bearing date the      day of      , for an order appointing a Jury to try whether the said recited order is reasonable and proper; I do hereby appoint [the names, &c., of the five or more Jurors] to be the Jury to try and decide the said question, and do require the said Jury to report their decision within      days from the date of this order at my office at      .  
 Given under my hand and the seal of the Court, this      day of      , 18      .  
 [Seal.]      [Signature.]

## XVIII.—MAGISTRATE'S NOTICE AND PEREMPTORY ORDER AFTER THE FINDING BY A JURY.

(See section 140.)

To [name, description, and address].

I HEREBY give you notice that the Jury duly appointed on the petition presented by you on the      day of      have found that the order issued on the      day of      requiring you [state substantially the requisition in the order] is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within [state the time allowed] on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this      day of      , 18      .  
 [Seal.]      [Signature.]

## XIX.—INJUNCTION TO PROVIDE AGAINST IMMINENT DANGER PENDING INQUIRY BY JURY.

(See section 142.)

To [name, description, and address].

WHEREAS the inquiry by a Jury appointed to try whether my order issued on the      day of      , 18      , is reasonable and proper, is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to [state plainly what is required to be done as a temporary safe-guard], pending the result of the local inquiry by the Jury.

Given under my hand and the seal of the Court, this      day of      , 18      .  
 [Seal.]      [Signature.]

## XX.—MAGISTRATE'S ORDER PROHIBITING THE REPETITION, &amp;c., OF A NUISANCE.

(See section 143.)

To [name, description, and address].

WHEREAS it has been made to appear to me that, &c. [state the proper recital, guided by Form No. XVI. or Form No. XXI., as the case may be];

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, &c. [as the case may be].

Given under my hand and the seal of the Court, this      day of      , 18      .  
 [Seal.]      [Signature.]

## SCHEDULE V.—(continued).

## FORMS—(continued).

## XXI.—MAGISTRATE'S ORDER TO PREVENT OBSTRUCTION, RIOT, &amp;c.

(See section 144.)

To [name, description, and address].

WHEREAS it has been made to appear to me that you are in possession [or have the management] of [describe clearly the property], and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road ;

or

WHEREAS it has been made to appear to me that you and a number of other persons [mention the class of persons] are about to meet and proceed in a religious procession along the public street, &c. [as the case may be], and that such procession is likely to lead to a riot or an affray ;

or

WHEREAS, &amp;c., &amp;c. [as the case may be] ;

I do hereby order you not to place or permit to be placed any of the earth or stones dug from your land in any part of the said road ;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession [or as the case recited may require].

Given under my hand and the seal of the Court, this      day of      , 18 .

[Seal.]

[Signature.]

## XXII.—MAGISTRATE'S ORDER DECLARING PARTY ENTITLED TO RETAIN POSSESSION OF LAND, &amp;c., IN DISPUTE.

(See section 145.)

It appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between [describe the parties by name and residence, or residence only if the dispute be between bodies of villagers] concerning certain [state concisely the subject of dispute] situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said [the subject of dispute], and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said [name or names or description] is true.

I do decide and declare that he is [or they are] in possession of the said [the subject of dispute] and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his [or their] possession in the meantime.

Given under my hand and the seal of the Court, this      day of      , 18 .

[Seal.]

[Signature.]

## XXIII.—WARRANT OF ATTACHMENT IN THE CASE OF A DISPUTE AS TO THE POSSESSION OF LAND, &amp;c.

(See section 146.)

To the Police-officer in charge of the police-station at      [or To the Collector of      ].

WHEREAS it has been made to appear to me that a dispute likely to induce a breach of the peace existed between [describe the parties concerned by name and

## SCHEDULE V.—(continued).

## FORMS—(continued).

*residence, or residence only if the dispute be between bodies of villagers*] concerning certain [*state concisely the subject of dispute*] situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said [*the subject of dispute*], and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said [*the subject of dispute*] [or I am unable to satisfy myself as to which of the said parties was in possession as aforesaid] ;

This is to authorize and require you to attach the said [*the subject of dispute*] by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained ; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this      day of      , 18 .  
[Seal.]      [Signature.]

## XXIV.—MAGISTRATE'S ORDER PROHIBITING THE DOING OF ANYTHING ON LAND OR WATER.

(See section 147.)

A DISPUTE having arisen concerning the right of use of [*state concisely the subject of dispute*] situate within the limits of my jurisdiction, the possession of which land [or water] is claimed exclusively by [*describe the person or persons*], and it appearing to me, on due inquiry into the same, that the said [land or water] has been open to the enjoyment of such use by the public [or if by an individual or a class of persons describe him or them], and [*if the use can be enjoyed throughout the year*] that the said use has been enjoyed within three months of the institution of the said inquiry [or if the use is enjoyable only at particular seasons, say during the last of the seasons at which the same is capable of being enjoyed] ;

I do order that the said land [*the claimant or claimants of possession*], or any one in their interest, shall not take [or retain] possession of the said land [or water] to the exclusion of the enjoyment of the right of use aforesaid, until he [or they] shall obtain the decree or order of a competent Court adjudging him [or them] to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this      day of      , 18 .  
[Seal.]      [Signature.]

## XXV.—BOND AND BAIL-BOND ON A PRELIMINARY INQUIRY BEFORE A POLICE-OFFICER.

(See section 169.)

I, [name], of      , being charged with the offence of      , and after inquiry required to appear before the Magistrate of      ,

or  
and after inquiry called upon to enter into my own recognizance to appear when required, do hereby bind myself to appear at      , in the Court of      , on the day of      next [or on such day as I may hereafter be required to attend], to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this      day of      , 18 .

[Signature.]

## SCHEDULE V.—(continued).

## FORMS—(continued).

I hereby declare myself [or We jointly and severally declare ourselves and each of us] surety [or sureties] for the above-said that he shall attend at , in the Court of ; on the day of next [or on such day as he may hereafter be required to attend], further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself [or we hereby bind ourselves] to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 . [Signature.]

## XXVI.—BOND TO PROSECUTE OR GIVE EVIDENCE.

(See section 170.)

I [name], of [place], do hereby bind myself to attend at , in the Court of , at o'clock on the day of next, and then and there to prosecute [or to prosecute and give evidence, or to give evidence] in the matter of a charge of against one A B, and, in case of making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 . [Signature.]

## XXVII.—NOTICE OF COMMITMENT BY MAGISTRATE TO GOVERNMENT PLEADER.

(See section 218.)

THE Magistrate of hereby gives notice that he has committed one for trial at the next Sessions ; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, &c. [state the offence as in the charge].

Dated this day of , 18 . [Signature.]

## XXVIII.—CHARGES.

(See sections 221, 222, 223.)

## (I).—CHARGES WITH ONE HEAD.

(a) I [name and office of Magistrate, &c.] hereby charge you [name of accused person] as follows :—

(b) That you, on or about the day of , at , waged war On Penal Code, section 121. against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session [when the charge is framed by a Presidency Magistrate, for Court of Session substitute High Court].

(c) And I hereby direct that you be tried by the said Court on the said charge.

[Signature and seal of the Magistrate.]

[To be substituted for (b) :—]

(2) That you, on or about the day of , at , with the intention of inducing the Hon'ble A B, Member of the Council of the Governor-General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

## SCHEDULE V.—(continued).

## FORMS—(continued).

(3) That you, being a public servant in the \_\_\_\_\_ Department, directly accepted from [state the name], for another party [state the name], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(4) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, did [or omitted to do, as the case may be] \_\_\_\_\_, such conduct being contrary to the provisions of Act \_\_\_\_\_, section \_\_\_\_\_, and known by you to be prejudicial to \_\_\_\_\_, and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(5) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in the course of the trial of \_\_\_\_\_, before \_\_\_\_\_, stated in evidence that " \_\_\_\_\_," which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(6) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed culpable homicide not amounting to murder, by causing the death of \_\_\_\_\_, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(7) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, abetted the commission of suicide by A B, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(8) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, voluntarily caused grievous hurt to \_\_\_\_\_, and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(9) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, robbed [state the name], and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(10) That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

[In cases tried by Magistrates, substitute "within my cognizance" for "within the cognizance of the Court of Session," and in (c) omit "by the said Court."]

## (II.)—CHARGES WITH TWO OR MORE HEADS.

(a) I [name and office of Magistrate, &c.], hereby charge you [name of accused person] as follows:—

(b) First.—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, knowing a coin to be counterfeit, delivered the same to another person, by name A B, as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

Secondly.—That you, on or about the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, knowing a coin to be counterfeit, attempted to induce another person, by name A B, to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

## SCHEDULE V.—(continued).

## FORMS—(continued).

(c) And I hereby direct that you be tried by the said Court on the said charge.

[Signature and seal of the Magistrate.]

[To be substituted for (b) :—]

(2) *First*.—That you, on or about the      day of      , at      , committed murder by causing the death of      , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*Secondly*.—That you, on or about the      day of      , at      , by causing the death of      , committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(3) *First*.—That you, on or about the      day of      , at      , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*Secondly*.—That you, on or about the      day of      , at      , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*Thirdly*.—That you, on or about the      day of      , at      , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

*Fourthly*.—That you, on or about the      day of      , at      , committed theft, having made preparation for causing fear or hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

(4) That you, on or about the      day of      , at      , in the course of Alternative charges on section 193. the inquiry into      before      , stated in evidence that “      ,” and that you, on or about the      day of      , at      , in the course of the trial of      , before      , stated in evidence that “      ,” one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [or High Court].

[In cases tried by Magistrates, substitute “within my cognizance” for “within the cognizance of the Court of Session,” and in (c) omit “by the said Court.”]

## (III.)—CHARGE FOR THEFT AFTER A PREVIOUS CONVICTION.

I. [name and office of Magistrate, &c.] hereby charge you [name of accused person] as follows :—

That you, on or about the      day of      , at      , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code and within the cognizance of the Court of Session [or { High Court, } as the case { Magistrate, } may be].

And you the said [name of accused] stand further charged that you, before the committing of the said offence, that is to say, on the      day of      , had been convicted by the [state Court by which conviction was had] at      of an offence punishable under Chapter XVII. of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night [Describe



## SCHEDULE V.—(continued).

## FORMS—(continued).

*the offence in the words used in the section under which the accused was convicted], which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code ;*  
and I hereby direct that you be tried, &c.

## XXIX.—WARRANT OF COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(See sections 246 and 258.)

To the Superintendent [or Keeper] of the Jail at  
WHEREAS, on the day of , 18 , [name of prisoner], the [1st, 2nd, 3rd, as the case may be] prisoner in case No. of the Calendar for 18 , was convicted before me [name and official designation] of the offence of [mention the offence or offences concisely] under section [or sections] of the Indian Penal Code [or of Act ], and was sentenced to [state the punishment fully and distinctly];

This is to authorize and require you, the said Superintendent [or Keeper], to receive the said [prisoner's name] into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of , 18 .

[Seal.]

[Signature.]

## XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(See section 250.)

To the Superintendent [or Keeper] of the Jail at

WHEREAS [name and description] has brought against [name and description of the accused person] the complaint that [mention it concisely], and the same has been dismissed as frivolous [or vexatious], and the order of dismissal awards payment by the said [name of complainant] of the sum of rupees ~~As~~ as amends ; and whereas the said sum has not been paid, and cannot be recovered by distress of the moveable property of the said [name of complainant], and an order has been made for his simple imprisonment in jail for the period of ~~not less than~~ days, unless the aforesaid sum be sooner paid ;

This is to authorize and require you, the said Superintendent [or Keeper], to receive the said [name] into your custody, together with this warrant, and him safely to keep in the said jail, for the said period of [term of imprisonment], subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty ; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

[Seal.]

[Signature.]

## XXXI.—SUMMONS TO A WITNESS.

(See sections 68 and 252.)

To of

WHEREAS complaint has been made before me that of has [or is suspected to have] committed the offence of [state the offence concisely, with time and place], and it appears to me that you are likely to give material evidence for the prosecution ;

## SCHEDULE V.—(continued).

## FORMS—(continued).

You are hereby summoned to appear before this Court on the      day of      next, at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that if you shall, without just excuse, neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this      day of      , 18  
[Seal.]      [Signature.]

## XXXII.—PRECEPT TO DISTRICT MAGISTRATE TO SUMMON JURORS AND ASSESSORS.

(See section 326.)

To the District Magistrate of

WHEREAS a Criminal Session is appointed to be held in the Court-house at      on the      day of      next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of Jurors and Assessors furnished to this Court; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A.M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

[Here enter the names of Jurors and Assessors.]

Given under my hand and the seal of the Court, this      day of      , 18.  
[Seal.]      [Signature.]

## XXXIII.—SUMMONS TO ASSESSOR OR JUROR.

(See section 328.)

To [name] of [place].

PURSUANT to a precept directed to me by the Court of Session of      , requiring your attendance as an Assessor [or a Juror] at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at [place] at ten o'clock in the forenoon on the      day of      next.

Given under my hand and seal of office, this      day of      , 18      .  
[Seal.]      [Signature.]

## XXXIV.—WARRANT OF COMMITMENT UNDER SENTENCE OF DEATH.

(See section 374.)

To the Superintendent [or Keeper] of the Jail at

WHEREAS at the Session held before me on the      day of      , 18      , [name of prisoner], the [1st, 2nd, 3rd, as the case may be] prisoner in case No.      of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amounting to murder under section      of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the      Court of      ;

This is to authorize and require you, the said Superintendent [or Keeper], to receive the said [prisoner's name] into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said      Court.

Given under my hand and the seal of the Court, this      day of      , 18      .  
[Seal.]      [Signature.]

## SCHEDULE V.—(continued).

## FORMS—(continued).

## XXXV.—WARRANT OF EXECUTION ON A SENTENCE OF DEATH.

(See section 381.)

To the Superintendent [or Keeper] of the Jail at  
 WHEREAS [name of prisoner], the [1st, 2nd, 3rd, as the case may be] prisoner in case No. of the Calendar at the Session held before me on the day of 18, has been, by a warrant of this Court, dated the day of , committed to your custody under sentence of death, and whereas the order of the Court of confirming the said sentence has been received by this Court ;

This is to authorize and require you, the said Superintendent [or Keeper], to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead at [time and place of execution], and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of , 18 .  
 [Seal.] [Signature.]

## XXXVI.—WARRANT AFTER A COMMUTATION OF A SENTENCE.

(See sections 381 and 382.)

To the Superintendent [or Keeper] of the Jail at  
 WHEREAS at a Session held on the day of , 18, [name of prisoner], the [1st, 2nd, 3rd, as the case may be] prisoner in case No. of the Calendar at the said Session, was convicted of the offence of , punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody ; and whereas, by the order of the Court of [a duplicate of which is hereunto annexed], the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life [or as the case may be] ;

This is to authorize and require you, the said Superintendent [or Keeper], safely to keep the said [prisoner's name] in your custody in the said jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words " custody in the said jail," " and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court, this day of , 18 .  
 [Seal.] [Signature.]

## XXXVII.—WARRANT TO LEVY A FINE BY DISTRESS AND SALE.

(See section 386.)

To [name and designation of the Police-officer or other person or persons who is or are to execute the warrant].

WHEREAS [name and description of the offender] was, on the day of , 18, convicted before me of the offence of [mention the offence concisely], and sentenced to pay a fine of rupees , and whereas the said [name], although required to pay the said fine, has not paid the same or any part thereof ;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said [name] which may be found within the District of ; and, if within [state the number of days or hours allowed] next after such distress the said sum shall not be paid [or forthwith], to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine ; returning this warrant, with an endorsement certifying what you have done under it immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .  
 [Seal.] [Signature.]

## SCHEDULE V.—(continued).

## FORMS—(continued).

## XXXVIII.—WARRANT OF COMMITMENT IN CERTAIN CASES OF CONTEMPT WHEN A FINE IS IMPOSED.

(See section 480.)

To the Superintendent [or Keeper] of the Jail at

WHEREAS at a Court holden before me on this day [name and description of the offender] in the presence [or view] of the Court committed wilful contempt ; And whereas for such contempt the said [name of offender] has been adjudged by the Court to pay a fine of rupees , or in default to suffer simple imprisonment for the space of [state the number of months or days] ;

This is to authorize and require you, the Superintendent [or Keeper] of the said jail, to receive the said [name of offender] into your custody, together with this warrant, and him safely to keep in the said jail for the said period of [term of imprisonment], unless the said fine be sooner paid ; and, on the receipt thereof, forthwith to set him at liberty ; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .  
[Seal.] [Signature.]

## XXXIX.—MAGISTRATE'S OR JUDGE'S WARRANT OF COMMITMENT OF WITNESS REFUSING TO ANSWER.

(See section 485.)

To [name and designation of officer of Court].

WHEREAS [name and description], being summoned [or brought before this Court] as a witness, and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question [or certain questions] put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for [term of detention adjudged] ;

This is to authorize and require you to take the said [name] into custody, and him safely keep in your custody for the space of days, unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law ; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .  
[Seal.] [Signature.]

## XL.—WARRANT OF IMPRISONMENT ON FAILURE TO PAY MAINTENANCE.

(See section 488.)

To the Superintendent [or Keeper] of the Jail at

WHEREAS [name, description, and address] has been proved before me to be possessed of sufficient means to maintain his wife [name] [or his child (name)], who is, by reason of (state the reason), unable to maintain herself (or himself), and to have neglected [or refused] to do so, and an order has been duly made requiring the said [name] to allow to his said wife [or child] for maintenance the monthly sum of rupees ; and whereas it has been further proved that the said [name], in wilful disregard of the said order, has failed to pay rupees , being the amount of the allowance for the month [or months] of : and thereupon an order was made adjudging him to undergo simple [or rigorous] imprisonment in the said jail for the period of ;

**FORMS—(continued).**

Given under my hand and the seal of the Court, this      day of      , 18 .  
[Seal.]      [Signature.]

*(See section 488.)*

Given under my hand and the seal of the Court, this      day of      , 18      .  
[Seal.]      [Signature.]

(See sections 496 and 499.)

Dated this      day of      , 18 .

[Signature.]

Dated this      day of      , 18 .

**[Signature.]**

## SCHEDULE V.—(continued).

## FORMS—(continued).

## XLIII.—WARRANT TO DISCHARGE A PERSON IMPRISONED ON FAILURE TO GIVE SECURITY.

(See section 500.)

To the Superintendent [or Keeper] of the Jail at \_\_\_\_\_ [or other officer in whose custody the person is].

WHEREAS [name and description of prisoner] was committed to your custody under warrant of this Court, dated the \_\_\_\_\_ day of \_\_\_\_\_, and has since with his surety [or sureties] duly executed a bond under section 499 of the Code of Criminal Procedure ;

This is to authorize and require you forthwith to discharge the said [name] from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 .  
[Seal.] [Signature.]

## XLIV.—WARRANT OF ATTACHMENT TO ENFORCE A BOND.

(See section 514.)

To the Police-officer in charge of the Police-station at \_\_\_\_\_

WHEREAS [name, description, and address of person] has failed to appear on [mention the occasion] pursuant to his recognizance, and has, by such default, forfeited to Her Majesty the Queen, Empress of India, the sum of rupees [the penalty in the bond] ; and whereas the said [name of person] has, on due notice to him, failed to pay the said sum, or show any sufficient cause why payment should not be enforced against him ;

This is to authorize and require you to attach any moveable property of the said [name] that you may find within the District of \_\_\_\_\_, by seizure and detention, and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 .  
[Seal.] [Signature.]

## XLV.—NOTICE TO SURETY ON BREACH OF A BOND.

(See section 514.)

To \_\_\_\_\_ of \_\_\_\_\_

WHEREAS, on the \_\_\_\_\_ day of \_\_\_\_\_, 18 , you became surety for [name] of [place] that he should appear before this Court on the \_\_\_\_\_ day of \_\_\_\_\_, and bound yourself in default thereof to forfeit the sum of rupees \_\_\_\_\_ to Her Majesty the Queen, Empress of India ; and whereas the said [name] has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees \_\_\_\_\_ ;

You are hereby required to pay the said penalty, or show cause, within \_\_\_\_\_ days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18 .  
[Seal.] [Signature.]

## SCHEDULE V.—(continued).

## FORMS—(continued).

XLVI.—NOTICE TO SURETY OF FORFEITURE OF BOND  
FOR GOOD BEHAVIOUR.

(See section 514.)

To \_\_\_\_\_ of \_\_\_\_\_  
 WHEREAS, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, you became surety by a bond for  
 [name] of [place] that he would be of good behaviour for the period of \_\_\_\_\_, and  
 bound yourself in default thereof to forfeit the sum of rupees \_\_\_\_\_ to Her Ma-  
 jesty the Queen, Empress of India; and whereas the said [name] has been convicted  
 of the offence of [mention the offence concisely] committed since you became such  
 surety, whereby your security-bond has become forfeited;

You are hereby required to pay the said penalty of rupees \_\_\_\_\_, or to show  
 cause within \_\_\_\_\_ days why it should not be paid.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
 [Seal.] [Signature.]

## XLVII.—WARRANT OF ATTACHMENT AGAINST A SURETY.

(See section 514.)

To \_\_\_\_\_  
 WHEREAS [name, description, and address] has bound himself as surety for the ap-  
 pearance of [mention the condition of the bond], and the said [name] has made default,  
 and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of rupees  
 [the penalty in the bond];

This is to authorize and require you to attach any moveable property of the said  
 [name] which you may find within the District of \_\_\_\_\_, by seizure and detention;  
 and, if the said amount be not paid within three days, to sell the property so attached,  
 or so much of it as may be sufficient to realize the amount aforesaid, and make return  
 of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
 [Seal.] [Signature.]

XLVIII.—WARRANT OF COMMITMENT OF THE SURETY OF AN  
ACCUSED PERSON ADMITTED TO BAIL.

(See section 514.)

To the Superintendent [or Keeper] of the Civil Jail at \_\_\_\_\_  
 WHEREAS [name and description of surety] has bound himself as a surety for  
 the appearance of \_\_\_\_\_ [state the condition of the bond], and the said [name]  
 has therein made default, whereby the penalty mentioned in the said bond has been  
 forfeited to Her Majesty the Queen, Empress of India; and whereas the said  
 [name of surety] has, on due notice to him, failed to pay the said sum, or show any  
 sufficient cause why payment should not be enforced against him, and the same can-  
 not be recovered by attachment and sale of moveable property of his, and an order  
 has been made for his imprisonment in the Civil Jail for [specify the period];

This is to authorize and require you, the said Superintendent [or Keeper], to  
 receive the said [name] into your custody with this warrant, and him safely to keep  
 in the said jail for the said [term of imprisonment], and to return this warrant  
 with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.  
 [Seal.] [Signature.]

## SCHEDULE V.—(continued).

## FORMS—(continued).

## XLIX.—NOTICE TO THE PRINCIPAL OF FORFEITURE OF A BOND TO KEEP THE PEACE.

(See section 514.)

To [name, description, and address].

WHEREAS on the       day of       , 18       , you entered into a bond not to commit, &c. [as in the bond], and proof of the forfeiture of the same has been given before me and duly recorded ;

You are hereby called upon to pay the said penalty of rupees       , or to show cause before me within       days why payment of the same should not be enforced against you.

Dated this       day of       , 18       .

[Seal.]

[Signature.]

## L.—WARRANT TO ATTACH THE PROPERTY OF THE PRINCIPAL ON BREACH OF A BOND TO KEEP THE PEACE.

(See section 514.)

To [name and designation of Police-officer] at the police-station of

WHEREAS [name and description] did, on the       day of       , 18       , enter into a bond for the sum of rupees       , binding himself not to commit a breach of the peace, &c. [as in the bond], and proof of the forfeiture of the said bond has been given before me and duly recorded ; and whereas notice has been given to the said [name], calling upon him to show cause why the said sum should not be paid, as he has failed to do so or to pay the said sum ;

This is to authorize and require you to attach, by seizure, moveable property belonging to the said [name] to the value of rupees       which you may find within the District of       , and, if the said sum be not paid within       , to sell the property so attached, or so much of it as may be sufficient to realize the same ; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this       day of       , 18       .  
[Seal.] [Signature.]

## LI.—WARRANT OF IMPRISONMENT ON BREACH OF A BOND TO KEEP THE PEACE.

(See section 514.)

To the Superintendent [or Keeper] of the Civil Jail at

WHEREAS proof has been given before me, and duly recorded, that [name and description] has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees       ; and whereas the said [name] has failed to pay the said sum, or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said [name] in the Civil Jail for the period of [term of imprisonment] ;

This is to authorize and require you, the said Superintendent [or Keeper] of the said Civil Jail, to receive the said [name] into your custody together with this warrant, and him safely to keep in the said jail for the said period of [term of imprisonment] ; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this       day of       , 18       .  
[Seal.] [Signature.]



## SCHEDULE V.—(concluded).

## FORMS—(concluded).

LII.—WARRANT OF ATTACHMENT AND SALE ON FORFEITURE OF  
BOND FOR GOOD BEHAVIOUR.

(See section 514.)

To the Police-officer in charge of the Police-station at

WHEREAS [*name, description, and address*] did, on the      day of      , 18      ,  
give security by bond in the sum of rupees      for the good behaviour of [*name,*  
*&c., of the principal*], and proof has been given before me, and duly recorded, of the  
commission by the said [*name*] of the offence of      , whereby the said bond has  
been forfeited ; and whereas notice has been given to the said [*name*] calling upon  
him to show cause why the said sum should not be paid, and he has failed to do so,  
or to pay the said sum ;

This is to authorize and require you to attach, by seizure, moveable property  
belonging to the said [*name*] to the value of rupees      which you may find  
within the District of      , and, if the said sum be not paid within      , to  
sell the property so attached, or so much of it as may be sufficient to realize the same,  
and to make return of what you have done under this warrant immediately upon its  
execution.

Given under my hand and the seal of the Court, this      day of      , 18      .

[Seal.]

[Signature.]

LIII.—WARRANT OF IMPRISONMENT ON FORFEITURE OF BOND  
FOR GOOD BEHAVIOUR.

(See section 514.)

To the Superintendent [*or Keeper*] of the Civil Jail at

WHEREAS [*name, description, and address*] did, on the      day of      , 18      ,  
give security by bond in the sum of rupees      , for the good behaviour of  
[*name, &c., of the principal*], and proof of the breach of the said bond has been given  
before me and duly recorded, whereby the said [*name*] has forfeited to Her Majesty  
the Queen, Empress of India, the sum of rupees      ; and whereas he has failed  
to pay the said sum, or to show cause why the sum should not be paid, although duly  
called upon to do so, and payment thereof cannot be enforced by attachment of his  
moveable property, and an order has been made for the imprisonment of the said  
[*name*] in the Civil Jail for the period of [*term of imprisonment*] ;

This is to authorize and require you, the said Superintendent [*or Keeper*], to re-  
ceive the said [*name*] into your custody, together with this warrant, and him safely  
to keep in the said jail for the said period of [*term of imprisonment*] ; returning this  
warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this      day of      , 18      .

[Seal.]

[Signature.]

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